

1 The Honorable Robert S. Lasnik
2
3
4
5
6
7
8
9

10
11 UNITED STATES DISTRICT COURT
12 WESTERN DISTRICT OF WASHINGTON
13
14

15 EDMONDS SCHOOL DISTRICT,
16
17 Plaintiff/Appellant,
18
19 v.
20
21 A.T., a minor child, and R.T. and I.T.
his parents,
Defendants/Appellees.

Case No. 2:16-cv-01500-RSL

DEFENDANTS' OPPOSITION TO
PLAINTIFF'S MOTION FOR
SUMMARY JUDGMENT AND
CROSS-MOTION FOR SUMMARY
JUDGMENT

17
18
19
20
21 **I. INTRODUCTION**

22 A.T. is a student with a rare psychological diagnosis, prodromal schizophrenia, whose
23 parents unilaterally placed him in a residential school in order for him to access an education.
24 Contrary to Plaintiff Edmonds School District's ("ESD") assertion that it offered A.T. an
25 appropriate program, A.T. could not receive an education in a non-residential placement, due

DEFENDANTS' OPPOSITION TO
PLAINTIFF'S MOTION FOR SUMMARY
JUDGMENT AND CROSS-MOTION FOR
SUMMARY JUDGMENT- 1

Cassady Law PLLC
506 Second Avenue, Suite 1400
Seattle, Washington 98104
Phone: 206-452-5665
Fax: 206-299-9960

1 to his complete inability to self-regulate and organize thoughts, and to attend and stay in
 2 class, as well-established in the administrative record. The profound effects of prodromal
 3 schizophrenia on A.T.'s ability to function in a school environment and even attend a public
 4 school educational program, as detailed in the administrative record, cannot be
 5 overemphasized.

6 The placement of A.T. at a residential school, Provo Canyon (Provo), was necessary
 7 in order to provide him supportive services to allow him to receive educational benefit, and
 8 thus the ALJ's order reimbursing A.T.'s parents should be upheld. In residential placement,
 9 Student has made gains in behavioral skills, participation in therapy and participation in
 10 academics.

11 Moreover, as the ALJ found, the Plaintiff offered Student extraordinarily deficient
 12 educational programming in light of the seriousness of the Student's disabilities, and the
 13 administrative record is replete with procedural violations of IDEA. A.T. had been on IEPs
 14 since preschool for ADHD and deficits related to a pre-adoption history of severe abuse and
 15 neglect. However, with the onset of prodromal schizophrenia in the ninth grade, his academic
 16 and functional performance plummeted until the Defendants enrolled him at Provo Canyon
 17 residential school in December of his eleventh grade year. Despite two years of clearly
 18 deteriorating behavior including at least five months of disability related school refusal, a
 19 diagnosis of prodromal schizophrenia in April of the tenth grade, private school
 20 reimbursement notification by Defendants, and the filing of a due process hearing, ESD failed
 21 to conduct a reevaluation of the Student or amend A.T.'s IEP to offer more than seventy-five

DEFENDANTS' OPPOSITION TO
 PLAINTIFF'S MOTION FOR SUMMARY
 JUDGMENT AND CROSS-MOTION FOR
 SUMMARY JUDGMENT- 2

Cassady Law PLLC
 506 Second Avenue, Suite 1400
 Seattle, Washington 98104
 Phone: 206-452-5665
 Fax: 206-299-9960

1 minutes a week of special education and related services.

2

3 II. STATEMENT OF FACTS

4

5

6 A. A.T.'s Early Childhood Experiences of Abuse and Neglect Predisposed Him to 7 Difficulties In School And Development Of Schizophrenia In Later Life.

8

9 Administrative Law Judge Michelle Mentzer succinctly and accurately summarized
10 R.T.'s early childhood in the first paragraph of her Findings of Fact:

11 The Student was born to a teenage mother who was killed
12 during a drug deal when he was 18 months old. The identity of
13 the Student's biological father is unknown. Child Protective
14 Services (CPS) records indicate the Student was exposed to
15 street drugs *in utero* and alcohol during breast-feeding. Before
16 the mother's death, there were more than 24 CPS allegations of
17 child neglect and abuse against her. The Student was removed
18 from her custody before she died, when he was 15 months old,
19 and placed with his maternal grandparents. . . throughout the
20 years he lived with the maternal grandparents, there were CPS
21 allegations of neglect and abuse against them. The Student
was removed from their home when he was three and a half
years old and placed in Washington State custody. He
experienced a failed adoption when he was three years and
eight months old, due to behavioral problems and the inability
to form a loving parent-child bond. Approximately a month
later, he went into foster care with the Parents, where he lived
with them and the Mother's 10 year old biological daughter.
The Parents adopted the Student when he was approximately
four and a half years old.

22 AR 1107 ¶1 (citing to AR 2181-2182, 2272-2273).

23 R.T. and I.T., the Defendants in this case, are the Parents who adopted A.T. at four-
24 and-a-half years of age (Parents). The record reflects that they provided a secure, loving and
25

DEFENDANTS' OPPOSITION TO
PLAINTIFF'S MOTION FOR SUMMARY
JUDGMENT AND CROSS-MOTION FOR
SUMMARY JUDGMENT- 3

Cassady Law PLLC
506 Second Avenue, Suite 1400
Seattle, Washington 98104
Phone: 206-452-5665
Fax: 206-299-9960

1 stable home to A.T. until they were forced to enroll him at their own expense at Provo
 2 Canyon, a therapeutic residential school in Utah, when A.T was sixteen years old.

3 Psychologist Stacy Cecchet¹ described the impact of childhood abuse and neglect on
 4 A.T.'s development, school performance, and susceptibility to schizophrenia in later life.
 5 Individuals have a window of opportunity from birth to six or seven to develop a stable
 6 personality. Tr. 913: 7 - 925:15.² If a child doesn't have a stable upbringing during this time
 7 period, he cannot cope with stress as effectively in later life as others. *Id.* Individuals with
 8 stable personalities do not take challenges to their self-esteem to heart because they have a
 9 baseline understanding of themselves as worthy; individuals with unstable personalities do
 10 not have this, so challenges and threatening social situations are far more likely to make them
 11 feel like an unworthy person at their core. *Id;* Tr. 919: 920 -925:15. Also, individuals from
 12 abuse and neglect backgrounds do not have parents who model organized lives and
 13 appropriate functioning in everyday life; so they literally do not know how to do it. *Id.*

14 _____
 15 ¹ Dr. Stacy Cecchet testified for the Defendant at hearing. She assessed the Student and generated
 16 her report before Parents' met with counsel in their education case. Tr. 154:25; AR 2179. No District
 17 witness, expert or otherwise, testified to disagreement with her report or her testimony. *See* AR 1-1103. Dr.
 18 Cecchet received a PhD in clinical psychology from Seattle Pacific Lutheran University in 2012. AR 2210.
 19 As part of her graduate work she did an 18 month rotation at one of the Washington State Children's Long-
 20 term Inpatient Program (CLIP) residential facilities, the Child Study and Treatment Center (CSTC). AR
 21 2201; Tr. 913:11-915:3 After receiving her PhD, she completed a postdoctoral fellowship in pediatric
 22 psychology at John Hopkins University, where she practiced at the Kennedy Krieger Institute's Behavioral
 23 Management Clinic. *Id.* Dr. Cecchet has participated in a number of research projects and has published
 24 several articles in professional journals. AR 2220, 2202-2203. For the last three years, she has maintained a
 25 clinical practice in Everett, Washington, working with children and adolescents with significant behavioral,
 26 mental health and academic issues. Tr. 913-915.

27 ² "Tr." refers to the transcript of the administrative hearing and appears at pages 1 through 1103 of the
 28 Administrative Record of OSPI Cause No. 2015-SE-0106X.

29
 30
 31
 32
 33
 34
 35
 36
 37
 38
 39
 40
 41
 42
 43
 44
 45
 46
 47
 48
 49
 50
 51
 52
 53
 54
 55
 56
 57
 58
 59
 60
 61
 62
 63
 64
 65
 66
 67
 68
 69
 70
 71
 72
 73
 74
 75
 76
 77
 78
 79
 80
 81
 82
 83
 84
 85
 86
 87
 88
 89
 90
 91
 92
 93
 94
 95
 96
 97
 98
 99
 100
 101
 102
 103
 104
 105
 106
 107
 108
 109
 110
 111
 112
 113
 114
 115
 116
 117
 118
 119
 120
 121
 122
 123
 124
 125
 126
 127
 128
 129
 130
 131
 132
 133
 134
 135
 136
 137
 138
 139
 140
 141
 142
 143
 144
 145
 146
 147
 148
 149
 150
 151
 152
 153
 154
 155
 156
 157
 158
 159
 160
 161
 162
 163
 164
 165
 166
 167
 168
 169
 170
 171
 172
 173
 174
 175
 176
 177
 178
 179
 180
 181
 182
 183
 184
 185
 186
 187
 188
 189
 190
 191
 192
 193
 194
 195
 196
 197
 198
 199
 200
 201
 202
 203
 204
 205
 206
 207
 208
 209
 210
 211
 212
 213
 214
 215
 216
 217
 218
 219
 220
 221
 222
 223
 224
 225
 226
 227
 228
 229
 230
 231
 232
 233
 234
 235
 236
 237
 238
 239
 240
 241
 242
 243
 244
 245
 246
 247
 248
 249
 250
 251
 252
 253
 254
 255
 256
 257
 258
 259
 260
 261
 262
 263
 264
 265
 266
 267
 268
 269
 270
 271
 272
 273
 274
 275
 276
 277
 278
 279
 280
 281
 282
 283
 284
 285
 286
 287
 288
 289
 290
 291
 292
 293
 294
 295
 296
 297
 298
 299
 300
 301
 302
 303
 304
 305
 306
 307
 308
 309
 310
 311
 312
 313
 314
 315
 316
 317
 318
 319
 320
 321
 322
 323
 324
 325
 326
 327
 328
 329
 330
 331
 332
 333
 334
 335
 336
 337
 338
 339
 340
 341
 342
 343
 344
 345
 346
 347
 348
 349
 350
 351
 352
 353
 354
 355
 356
 357
 358
 359
 360
 361
 362
 363
 364
 365
 366
 367
 368
 369
 370
 371
 372
 373
 374
 375
 376
 377
 378
 379
 380
 381
 382
 383
 384
 385
 386
 387
 388
 389
 390
 391
 392
 393
 394
 395
 396
 397
 398
 399
 400
 401
 402
 403
 404
 405
 406
 407
 408
 409
 410
 411
 412
 413
 414
 415
 416
 417
 418
 419
 420
 421
 422
 423
 424
 425
 426
 427
 428
 429
 430
 431
 432
 433
 434
 435
 436
 437
 438
 439
 440
 441
 442
 443
 444
 445
 446
 447
 448
 449
 450
 451
 452
 453
 454
 455
 456
 457
 458
 459
 460
 461
 462
 463
 464
 465
 466
 467
 468
 469
 470
 471
 472
 473
 474
 475
 476
 477
 478
 479
 480
 481
 482
 483
 484
 485
 486
 487
 488
 489
 490
 491
 492
 493
 494
 495
 496
 497
 498
 499
 500
 501
 502
 503
 504
 505
 506
 507
 508
 509
 510
 511
 512
 513
 514
 515
 516
 517
 518
 519
 520
 521
 522
 523
 524
 525
 526
 527
 528
 529
 530
 531
 532
 533
 534
 535
 536
 537
 538
 539
 540
 541
 542
 543
 544
 545
 546
 547
 548
 549
 550
 551
 552
 553
 554
 555
 556
 557
 558
 559
 560
 561
 562
 563
 564
 565
 566
 567
 568
 569
 570
 571
 572
 573
 574
 575
 576
 577
 578
 579
 580
 581
 582
 583
 584
 585
 586
 587
 588
 589
 590
 591
 592
 593
 594
 595
 596
 597
 598
 599
 600
 601
 602
 603
 604
 605
 606
 607
 608
 609
 610
 611
 612
 613
 614
 615
 616
 617
 618
 619
 620
 621
 622
 623
 624
 625
 626
 627
 628
 629
 630
 631
 632
 633
 634
 635
 636
 637
 638
 639
 640
 641
 642
 643
 644
 645
 646
 647
 648
 649
 650
 651
 652
 653
 654
 655
 656
 657
 658
 659
 660
 661
 662
 663
 664
 665
 666
 667
 668
 669
 670
 671
 672
 673
 674
 675
 676
 677
 678
 679
 680
 681
 682
 683
 684
 685
 686
 687
 688
 689
 690
 691
 692
 693
 694
 695
 696
 697
 698
 699
 700
 701
 702
 703
 704
 705
 706
 707
 708
 709
 710
 711
 712
 713
 714
 715
 716
 717
 718
 719
 720
 721
 722
 723
 724
 725
 726
 727
 728
 729
 730
 731
 732
 733
 734
 735
 736
 737
 738
 739
 740
 741
 742
 743
 744
 745
 746
 747
 748
 749
 750
 751
 752
 753
 754
 755
 756
 757
 758
 759
 760
 761
 762
 763
 764
 765
 766
 767
 768
 769
 770
 771
 772
 773
 774
 775
 776
 777
 778
 779
 780
 781
 782
 783
 784
 785
 786
 787
 788
 789
 790
 791
 792
 793
 794
 795
 796
 797
 798
 799
 800
 801
 802
 803
 804
 805
 806
 807
 808
 809
 8010
 8011
 8012
 8013
 8014
 8015
 8016
 8017
 8018
 8019
 8020
 8021
 8022
 8023
 8024
 8025
 8026
 8027
 8028
 8029
 8030
 8031
 8032
 8033
 8034
 8035
 8036
 8037
 8038
 8039
 8040
 8041
 8042
 8043
 8044
 8045
 8046
 8047
 8048
 8049
 8050
 8051
 8052
 8053
 8054
 8055
 8056
 8057
 8058
 8059
 8060
 8061
 8062
 8063
 8064
 8065
 8066
 8067
 8068
 8069
 8070
 8071
 8072
 8073
 8074
 8075
 8076
 8077
 8078
 8079
 8080
 8081
 8082
 8083
 8084
 8085
 8086
 8087
 8088
 8089
 8090
 8091
 8092
 8093
 8094
 8095
 8096
 8097
 8098
 8099
 80100
 80101
 80102
 80103
 80104
 80105
 80106
 80107
 80108
 80109
 80110
 80111
 80112
 80113
 80114
 80115
 80116
 80117
 80118
 80119
 80120
 80121
 80122
 80123
 80124
 80125
 80126
 80127
 80128
 80129
 80130
 80131
 80132
 80133
 80134
 80135
 80136
 80137
 80138
 80139
 80140
 80141
 80142
 80143
 80144
 80145
 80146
 80147
 80148
 80149
 80150
 80151
 80152
 80153
 80154
 80155
 80156
 80157
 80158
 80159
 80160
 80161
 80162
 80163
 80164
 80165
 80166
 80167
 80168
 80169
 80170
 80171
 80172
 80173
 80174
 80175
 80176
 80177
 80178
 80179
 80180
 80181
 80182
 80183
 80184
 80185
 80186
 80187
 80188
 80189
 80190
 80191
 80192
 80193
 80194
 80195
 80196
 80197
 80198
 80199
 80200
 80201
 80202
 80203
 80204
 80205
 80206
 80207
 80208
 80209
 80210
 80211
 80212
 80213
 80214
 80215
 80216
 80217
 80218
 80219
 80220
 80221
 80222
 80223
 80224
 80225
 80226
 80227
 80228
 80229
 80230
 80231
 80232
 80233
 80234
 80235
 80236
 80237
 80238
 80239
 80240
 80241
 80242
 80243
 80244
 80245
 80246
 80247
 80248
 80249
 80250
 80251
 80252
 80253
 80254
 80255
 80256
 80257
 80258
 80259
 80260
 80261
 80262
 80263
 80264
 80265
 80266
 80267
 80268
 80269
 80270
 80271
 80272
 80273
 80274
 80275
 80276
 80277
 80278
 80279
 80280
 80281
 80282
 80283
 80284
 80285
 80286
 80287
 80288
 80289
 80290
 80291
 80292
 80293
 80294
 80295
 80296
 80297
 80298
 80299
 80300
 80301
 80302
 80303
 80304
 80305
 80306
 80307
 80308
 80309
 80310
 80311
 80312
 80313
 80314
 80315
 80316
 80317
 80318
 80319
 80320
 80321
 80322
 80323
 80324
 80325
 80326
 80327
 80328
 80329
 80330
 80331
 80332
 80333
 80334
 80335
 80336
 80337
 80338
 80339
 80340
 80341
 80342
 80343
 80344
 80345
 80346
 80347
 80348
 80349
 80350
 80351
 80352
 80353
 80354
 80355
 80356
 80357
 80358
 80359
 80360
 80361
 80362
 80363
 80364
 80365
 80366
 80367
 80368
 80369
 80370
 80371
 80372
 80373
 80374
 80375
 80376
 80377
 80378
 80379
 80380
 80381
 80382
 80383
 80384
 80385
 80386
 80387
 80388
 80389
 80390
 80391
 80392
 80393
 80394
 80395
 80396
 80397
 80398
 80399
 80400
 80401
 80402
 80403
 80404
 80405
 80406
 80407
 80408
 80409
 80410
 80411
 80412
 80413
 80414
 80415
 80416
 80417
 80418
 80419
 80420
 80421
 80422
 80423
 80424
 80425
 80426
 80427
 80428
 80429
 80430
 80431
 80432
 80433
 80434
 80435
 80436
 80437
 80438
 80439
 80440
 80441
 80442
 80443
 80444
 80445
 80446
 80447
 80448
 80449
 80450
 80451
 80452
 80453
 80454
 80455
 80456
 80457
 80458
 80459
 80460
 80461
 80462
 80463
 80464
 80465
 80466
 80467
 80468
 80469
 80470
 80471
 80472
 80473
 80474
 80475
 80476
 80477
 80478
 80479
 80480
 80481
 80482
 80483
 80484
 80485
 80486
 80487
 80488
 80489
 80490
 80491
 80492
 80493
 80494
 80495
 80496
 80497
 80498
 80499
 80500
 80501
 80502
 80503
 80504
 80505
 80506
 80507
 80508
 80509
 80510
 80511
 80512
 80513
 80514
 80515
 80516
 80517
 80518
 80519
 80520
 80521
 80522
 80523
 80524
 80525
 80526
 80527
 80528
 80529
 80530
 80531
 80532
 80533
 80534
 80535
 80536
 80537
 80538
 80539
 80540
 80541
 80542
 80543
 80544
 80545
 80546
 80547
 80548
 80549
 80550
 80551
 80552
 80553
 80554
 80555
 80556
 80557
 80558
 80559
 80560
 80561
 80562
 80563
 80564
 80565
 80566
 80567
 80568
 80569
 80570
 80571
 80572
 80573
 805

1 Academic settings generate stressful situations: completing a big assignment, making
 2 satisfactory grades, fitting into social environments, and connecting with academic officials.
 3 A student with an unstable personality cannot regulate emotions when confronted with such
 4 everyday stresses and is far more likely to act out with explosive behavior and aggression; to
 5 experience deficits in social skills that may lead to desperate attempts to achieve closeness
 6 and affection, including through acts of aggression; and to have cognitive disorganization that
 7 makes linear thinking difficult and routine tasks like getting up in the morning, going to
 8 school, remembering to turn in your homework assignment, etc., difficult. *Id.*

9 And tragically, A.T.'s history of childhood abuse and neglect increased his chances of
 10 developing schizophrenia in later life. Tr. 927:15 - 929:24. Dr. Cecchet testified that, if you
 11 think of a gene as a light switch, A.T. was born with a "wiggly light switch" for
 12 schizophrenia. Under the stress diathesis model of schizophrenia, stress accumulated -- from
 13 severe abuse, severe neglect, exposure to drugs and alcohol, unstable living placements,
 14 failed placement with grandparents --- until the light switch for schizophrenia flipped to the
 15 "on" position. Tr. 929: 15-24.

16 Youths with schizophrenia do not normally have the full hallucinations and delusions
 17 typical of schizophrenia. They have, like the Student, atypical thoughts, nonlinear thoughts
 18 that have some delusional elements, and some atypical sensory experiences; this is prodromal
 19 schizophrenia. *Id.* Tr. 934:1-25, 936:22-25. Using the analogy of the light switch, prodromal
 20 schizophrenia is like a fluorescent light flickering before it comes on completely. Tr. 930:14-
 21 25.

DEFENDANTS' OPPOSITION TO
 PLAINTIFF'S MOTION FOR SUMMARY
 JUDGMENT AND CROSS-MOTION FOR
 SUMMARY JUDGMENT- 5

Cassady Law PLLC
 506 Second Avenue, Suite 1400
 Seattle, Washington 98104
 Phone: 206-452-5665
 Fax: 206-299-9960

1 **B. A.T. Exhibited Social, Emotional and Behavioral Issues Throughout Preschool, Elementary and Middle School**

2 A.T. exhibited difficulty bonding with his adoptive family and interacting with peers as a
 3 preschooler. Tr. 29:18-25. Several preschools exited A.T. for aggressive behavior towards
 4 other students. *Id.* The Mother testified that A.T. desired friends but had difficulty making
 5 and keeping them, because he did not understand how to relate to others socially. Tr. 37:12-
 6 38:9. Despite social and behavioral difficulties in preschool, A.T. loved to read and scored
 7 above average in intelligence testing. Tr. 33:5-9, 33:13-34:5; AR 1562. Parents stated that
 8 A.T.'s education has been "extremely important" to them. Tr. 33:16.

9 A.T. attended Edmonds School District (ESD) throughout his school career, from pre-
 10 school up until his enrollment in Provo in December of what should have been his tenth grade
 11 year, and he always had an Individualized Education Plan (IEP). Tr. 30:20-31:3. Early ESD
 12 evaluations referenced Attention Deficit Hyperactivity Disorder (ADHD) and described
 13 childhood abuse and neglect as sources of disability. AR 1640. A.T.'s IEPs (including
 14 Behavior Intervention Plans, or "BIPs") addressed deficits in social skills, behavior, attention
 15 and executive function. Tr. 31:4-17.

16 Throughout elementary and middle school, A.T. received special education support
 17 for emotional and behavioral issues. A.T. participated in a self-contained classroom designed
 18 for students with social/emotional deficits from first through third grades. Tr. 44:15-45:21,
 19 Tr. 72:11-21; AR 1637. From fourth through sixth grades, A.T. attended a general education
 20 classroom with a behavior plan and some pull-out special education support for emotional
 21

DEFENDANTS' OPPOSITION TO
 PLAINTIFF'S MOTION FOR SUMMARY
 JUDGMENT AND CROSS-MOTION FOR
 SUMMARY JUDGMENT- 6

Cassady Law PLLC
 506 Second Avenue, Suite 1400
 Seattle, Washington 98104
 Phone: 206-452-5665
 Fax: 206-299-9960

1 regulation. AR at 1637; 1726. During A.T.’s seventh and eighth grade years, A.T. attended
2 general education classes, but continued to receive special education support in an Intensive
3 Learning Support classroom (“ILS”, a classroom for students with behavior disorders) when
4 he needed an alternate setting to regulate his thoughts, feelings or behaviors. AR 1726, 1729;
5 Tr. 47:1-19, 629:24-630:1.

6 **C. When A.T. Developed Prodromal Schizophrenia in His Ninth Grade Year, His
7 Academic and Behavioral Functioning Declined Dramatically but ESD Did Not
8 Respond by Providing Appropriate Educational Programming**

9 **1. The Onset of Prodromal Schizophrenia**

10 Dr. Cecchet testified that A.T. experienced the onset of prodromal schizophrenia a
11 year to eighteen months prior to her evaluation dated April 7, 2015. Tr. 1007:2-13, 2179. In
12 other words, onset occurred sometime from the beginning to the middle of A.T.’s ninth grade
year.

13 **2. A.T.’s Decline in Academic and Functional Performance**

14 A.T.’s academic and functional performance declined drastically during his ninth
15 grade year (2013-2014) at Meadowdale High School (“MDHS”).

16 A.T.’s grades declined in correlation to his behaviors. Tr. 52:18-25. A.T. finished the
17 second semester of eighth grade with a GPA of 2.871. AR at 1699, 2375. By comparison, in
18 the first semester of A.T.’s ninth grade year, he earned a GPA of 1.667 with 3.0 credits
19 earned of 3.5 credits attempted, and in the second semester a GPA of 1.050 with 2.5 credits
20 earned of 3.5 credits attempted. AR at 2380.

1 Teachers frequently removed A.T. from classes due to behaviors. A.T.’s math teacher
 2 had to remove A.T. to the hallway because his disruptions annoyed other children who then
 3 refused to engage in group learning activities with A.T. Tr. 53:9-17. In A.T.’s math class,
 4 A.T. stood out as *the* student with behavioral issues. Tr. 440:5-10. A.T. was also put out of
 5 band class because of disruptive behaviors with his band teacher remarking that “[A.T.]
 6 seldom can stay in the clinic session without being removed by the para pro.” Tr. 53:1-5;
 7 53:18-54:6; AR at 1776.

8 In addition to missing class because of removals by teachers, A.T. eloped from classes
 9 and did not return, often expressing a need to go to the bathroom or the nurse’s office. Tr.
 10 280:19-281:2. Teachers described “continuous” requests to leave class. Tr. 435:7-16, 436-
 11 437:15; AR at 1769. Per the Mother and teachers, A.T. would sometimes just wander around
 12 the school building. *Id*; AR at 1774. The Parents frequently received automated telephone
 13 calls from the school in the evening indicating A.T. had missed specific class periods. Tr.
 14 54:1-55:6; 280:21-24; 55:25-56:6.

15 Despite A.T.’s documented behavioral regression, teachers testified at hearing that
 16 they did not instruct A.T. any differently than other students in the class, and did not have
 17 access to his BIPs or his complete IEP. Tr. 452:7-21. Teachers routinely received only “IEP-
 18 At-A-Glance” for students with IEPs, Tr. 456, which did not include behavior plans. IEP-At-
 19 A-Glance is a “shorter, consolidated” piece of the larger IEP that is given to general
 20 education teachers, Tr. 589:14-17, and A.T.’s math teacher did not recall ever seeing a
 21 behavior plan for A.T or using a behavior plan to respond to his behaviors. Tr. 452:7-21.

DEFENDANTS’ OPPOSITION TO
 PLAINTIFF’S MOTION FOR SUMMARY
 JUDGMENT AND CROSS-MOTION FOR
 SUMMARY JUDGMENT- 8

Cassady Law PLLC
 506 Second Avenue, Suite 1400
 Seattle, Washington 98104
 Phone: 206-452-5665
 Fax: 206-299-9960

1 A.T. began to exhibit oppositional behavior at home in completing homework and
 2 keeping track of assignments. He refused to use the communication notebook between home
 3 and school that he had used in middle school to help his Parents keep track of assignments
 4 and school performance. Tr. 78:19-79:2. In middle school, the Parents would work with
 5 A.T. on weekends and after school on past-due assignments, but in the ninth grade, there
 6 would always be “a big fight” when Parents attempted to work with A.T. on school
 7 assignments and he would sometime sit at the table for three hours without writing a single
 8 word. Tr. 79:16-22, 55:12-17, 303:8-15.

9 Despite A.T.’s significant drop in grades, assignment completion, and behavioral
 10 performance at school in the ninth grade, ESD did not significantly change A.T.’s IEP or
 11 behavior plan during the ninth grade, except to eliminate 1:1 behavioral instruction from
 12 School Psychologist and Behavior Interventionist Christine Sutton, Tr. 60:2-25; AR at 1758,
 13 1800, as part of a school policy applied to all special education students. Tr. 838:18-842:2.
 14 Elimination of 1:1 behavioral instruction with Sutton in the January 29, 2014 IEP occurred
 15 despite the fact that A.T.’s evaluations, IEPs, FBAs and BIPs over many years stressed his
 16 need for close, personal relationships with staff and documented assessments indicating
 17 withdrawal and depression. Tr. 853:22- 858:1. In fact, the January 29, 2013 ESD reevaluation
 18 forming the basis for A.T.’s February 8, 2013 (8th grade) and January 29, 2014 (ninth grade)
 19 IEPs specifically states A.T. needs counseling services. AR 1727.

20 School Psychologist Sutton testified that, although A.T.’s 1:1 behavior minutes with
 21 her were removed from the January 29, 2014 IEP, she attempted consultations with MDHS

DEFENDANTS’ OPPOSITION TO
 PLAINTIFF’S MOTION FOR SUMMARY
 JUDGMENT AND CROSS-MOTION FOR
 SUMMARY JUDGMENT- 9

Cassady Law PLLC
 506 Second Avenue, Suite 1400
 Seattle, Washington 98104
 Phone: 206-452-5665
 Fax: 206-299-9960

1 staff to address and remediate A.T.'s behaviors, but staff were not receptive. Tr. 818:6-9,
 2 839:6-18, 842:12-843:15, 824:23-825:2-16; AR at 1800, 1812-181, 1807, 1818. Sutton's
 3 relatively unsuccessful attempts to have other staff talk with A.T., to preserve A.T.'s self-
 4 esteem around band, and to get other staff to recognize A.T.'s strengths, are consistent with
 5 A.T.'s written IEPs and Behavior Intervention Plans ("BIPs"). *See* AR at 1788-1806, 1746-
 6 1765.

7 **3. A.T.'s Behaviors at Home and in The Community Declined During His Ninth
 8 Grade Year in Ways Impacting His School Performance**

9 In the ninth grade, A.T. refused to stay after school to work on homework and began
 10 to follow other children who were walking home from school to their homes instead of his
 11 own. Tr. 99:6-100:7, 822:24-823:14. Sutton encouraged MDHS staff to investigate the
 12 reasons for A.T.'s refusal to stay at school, but staff dismissed her recommendations. AR
 13 1807-1811. Parents and MDHS staff knew A.T. was following other children home to their
 14 houses, and Sutton found this odd social behavior typical for A.T, who just wanted friends
 15 and desperately sought reactions from others. AR at 1818; Tr. 822:24-823:14.

16 A.T.'s behavior at school had escalated significantly by the end of the ninth grade,
 17 right before the summer of 2014. MDHS staff recognized that his behaviors were starting to
 18 "ramp up," including repeatedly asking for money, following girls home, not leaving them
 19 alone, and engaging in fights. AR at 1818. On May 23, 2014, MDHS's Dean of Students
 20 Brian Grijalva emailed MDHS staff, "Might need to develop a plan on how to reign this
 21 kiddo in if he's going to make it to the end of the school year in one piece." *Id.* Yet the school

DEFENDANTS' OPPOSITION TO
 PLAINTIFF'S MOTION FOR SUMMARY
 JUDGMENT AND CROSS-MOTION FOR
 SUMMARY JUDGMENT- 10

Cassady Law PLLC
 506 Second Avenue, Suite 1400
 Seattle, Washington 98104
 Phone: 206-452-5665
 Fax: 206-299-9960

1 did not convene an IEP meeting to increase special education, change A.T.'s behavior plan,
 2 or initiate a reevaluation to investigate the reasons for the behaviors or how to address them.
 3 Tr. 63:17-64:1.

4 Unfortunately, A.T.'s desperate attempts to connect with other students contributed to
 5 his first juvenile offenses and his developing disregard of home curfews. Following students
 6 home after school resulted in trespassing charges and, on one occasion, in A.T. obtaining and
 7 using a BB gun at another child's house. Tr. 99:6 -100:7. Moreover, A.T.'s initial failures to
 8 come home from school at the end of the school day during the second half of the ninth grade
 9 year escalated over time to staying away from home overnight and for entire weekends Tr.
 10 84:19-85:2; 166:5-9, 281:8-10.

11 **D. Summer Between Ninth and Tenth Grades**

12 A.T.'s behavior in the summer of 2014 grew increasingly bizarre. He reported to his
 13 Mother that he was sleeping on the street with homeless people and that he felt a kinship with
 14 them. Tr. 65:14-19. He was defiant and destroyed property when at home. Tr. 66:4-13.

15 Parents filed an At-Risk Youth Petition ("ARY")³ on July 1, 2014, "because of the
 16 experience [A.T.] was having both at home and at school." Tr. 97:11-14 (Mother) (emphasis
 17 added). A.T.'s mother testified that she thought once the ARY set structures for school

18

 19 ³ ARY Petitions, when granted, authorize a court to impose penalties on youth for committing non-
 20 criminal offenses, such as being truant at school, not completing homework, not abiding by home curfews,
 etc. Such petitions ideally provide an authority figure outside the home to impose rules and consequences
 on students who are no longer or insufficiently responsive to parental rule-setting and discipline. *See* RCW
 13.32A.191 *et.seq.*

1 attendance and assignments, and a curfew, then his schoolwork would fall into place. Tr.
 2 85:3-15. Parents cited school issues to the Court as part of the grounds for their ARY
 3 petition, noting A.T.'s work refusal and failing grades. AR at 1832,1836,1840.

4 **E. A.T.'s Academic and Functional Skills Continued to Deteriorate in the Tenth Grade,
 Yet ESD Did Not Offer Meaningful Intervention**

5 **1. School Performance Declined Steadily from The Beginning of Tenth Grade
 Through A.T.'s Long Term Suspension on January 25, 2015**

6 During the first few days of A.T.'s tenth grade school year, the Father told MDHS
 7 counselor Nathan Howden about A.T.'s continuing behavioral issues over the summer, such
 8 as staying out all night and sleeping on park benches, and also about the ARY Petition. Tr.
 9 171:1-8, 883:1-3.

10 Unfortunately, A.T.'s behaviors continued to deteriorate in tenth grade, with a
 11 correlating drop in academic performance. A.T. earned first semester grades of F in English,
 12 F in Int. Engineering Design, F in World History and a D in Geometry, for a semester GPA of
 13 .5 and a total of .5 credits earned out of 2.0 credits attempted. AR at 2380.

14 A.T. continued to elope at school. A.T. frequently absented himself from class, even
 15 when he went to school in the morning. Tr. 116:18-117, 442:12-443:2. He would not
 16 complete homework. Tr. 260:17-25. He disrupted classes when he was in school, to the
 17 point that ESD staff made comments about changing educational programming, albeit
 18 without following up. For example, A.T. was given a suspension for "continually messing
 19 with computers in lab, turning computers on and off, whipping headphone cables around,"
 20 and continually touching other student's computers and bothering them. AR at 1864; 1871.

21 DEFENDANTS' OPPOSITION TO
 PLAINTIFF'S MOTION FOR SUMMARY
 JUDGMENT AND CROSS-MOTION FOR
 SUMMARY JUDGMENT- 12

Cassady Law PLLC
 506 Second Avenue, Suite 1400
 Seattle, Washington 98104
 Phone: 206-452-5665
 Fax: 206-299-9960

1 Dean of Students Grijalva wrote that he was “at a loss,” when it came to changing A.T.’s
 2 behaviors, that “discipline is ineffectual,” and that he was considering a shortened day, A.T.’s
 3 removal from certain classes, and increased supervision. AR at 1859.

4 ESD staff continued to fail to implement behavior interventions prescribed in A.T.’s
 5 IEPs and BIPs, and school staff continued to obstruct MDHS School Psychologist and
 6 Behavior Interventionist Sutton’s attempts to implement A.T.’s BIP. Tr. 826:17- 827:8; AR at
 7 1868. As had been the case in the ninth grade, tenth grade teaching staff did not recall receipt
 8 of A.T.’s BIP or complete IEP, receiving instead the very abbreviated and incomplete “IEP-
 9 At-A-Glance.” Tr. 419:12-18, 420:7-8; 425:12-426:4-25.

10 Disciplinary incidents accumulated in A.T.’s tenth grade year, culminating in a
 11 suspension in mid-January. On January 6, 2015, MDHS suspended A.T. for hiding in a stall
 12 of the girls’ bathroom for the third time that school year after leaving class. AR at 1881; Tr.
 13 350:1-22. MDHS held a manifestation meeting on January 13, 2015, and determined the
 14 behavior was not a manifestation of A.T.’s disability, AR at 1879-1885, 1889, though the
 15 School Psychologist in charge of the manifestation review, Ms. Sutton, testified repeatedly
 16 that she did not know why A.T. went into the girl’s bathroom and acknowledged that social
 17 issues were the root of his behavioral difficulties. Tr. 875:5-19. No one asked A.T. at the
 18 time why he had hidden in the girl’s restroom, but he reported to Dr. Cecchet long after the
 19 incident that a person wearing a hoodie with the hood zipped up in the front and completely
 20 covering the person’s neck and face instructed him to go into the restroom. Tr. 1003:14-
 21 1006:8. Dr. Cecchet cited this as a hallucination related to his prodromal schizophrenia,

DEFENDANTS’ OPPOSITION TO
 PLAINTIFF’S MOTION FOR SUMMARY
 JUDGMENT AND CROSS-MOTION FOR
 SUMMARY JUDGMENT- 13

Cassady Law PLLC
 506 Second Avenue, Suite 1400
 Seattle, Washington 98104
 Phone: 206-452-5665
 Fax: 206-299-9960

1 along with seeing dogs in rooms that were not there, owls swooping down that other students
 2 did not see, etc. AR 2077.

3 A.T. returned to school from his suspension for being in the girl's restroom on
 4 January 21, 2015, and the very next day incurred an even longer, 45-day suspension. AR at
 5 1950-1951. This time, A.T. refused to take his binder out of his backpack and headbutted
 6 Dean Grijalva when he grabbed the backpack to investigate. *Id.* The backpack contained a
 7 wrist rocket slingshot, thirty large ball bearings and a lighter. *Id.* MDHS then held a
 8 manifestation meeting and again found the behavior not a manifestation of A.T.'s disability.
 9 *Id.* However, School Psychologist Sutton, who was in charge of the manifestation review,
 10 testified to uncertainty about A.T.'s disability and its relationship to his behavior. Tr. 881:11-
 11 17, 878:11-15, 878:20-879:13. She also testified she had always suspected A.T. was on the
 12 autism spectrum. Tr. 853:12-21. Significantly, A.T. was not diagnosed with autism spectrum
 13 disorder and this disability had therefore not been considered in educational planning. *See*
 14 AR 1557, 1637, 1727.

15 ESD generated a new BIP and IEP on the same date as the manifestation meeting, on
 16 January 27, 2015. AR at 1896-1901, 1902-1942. However, Father testified the meeting,
 17 which lasted thirty minutes, only involved a manifestation review concerning the disciplinary
 18 infraction and suspension, with no discussion of an IEP or IEP services. AR at 1924; Tr.
 19 123:9-10,130:20-25. Sutton did not remember it being at an IEP meeting, Tr. 787:7-11, and
 20 no other ESD employee testified to an IEP meeting occurring or to discussion of an IEP at the
 21 January 27, 2015 meeting.

DEFENDANTS' OPPOSITION TO
 PLAINTIFF'S MOTION FOR SUMMARY
 JUDGMENT AND CROSS-MOTION FOR
 SUMMARY JUDGMENT- 14

Cassady Law PLLC
 506 Second Avenue, Suite 1400
 Seattle, Washington 98104
 Phone: 206-452-5665
 Fax: 206-299-9960

1 Despite A.T.'s deteriorating school performance, ESD did not significantly change the
 2 educational programming in A.T.'s new IEP, dated January 27, 2015. The "Special
 3 Education and Related Services" pages in the new IEP and in the former January 29, 2014
 4 IEP are identical except for the dates the services are to be delivered. AR at 1800, 1934.
 5 Despite an earlier statement in the January 13, 2015 PWN (documenting the manifestation
 6 review arising out of the girls bathroom episode) that A.T. would receive 1:1 aide support and
 7 access to a behavior interventionist (ie, Ms. Sutton), AR 1950, the January 27, 2015 IEP did
 8 not include these services. *Id.* The behavior goals were changed slightly to purportedly
 9 improve disruptive and prosocial behavior, but no additional services were offered to help
 10 A.T. achieve these goals. Tr. 127:6-128:23; AR at 1796-1797,1929-1930.

11 Dr. Stacy Cecchet, reviewed A.T.'s January 27, 2015 IEP, and testified that it was
 12 "wildly inappropriate" for A.T given the level of his need at the time the IEP was offered.
 13 TR. 975-978:11. She testified to insufficient specialized instruction and accommodations, and
 14 that no day placement (as opposed to residential placement) would have been appropriate
 15 when the IEP was created. *Id.*

16 **2. Disability-Related School Refusal and Elopement from Home and School After
 17 Student's January 2016 Long-Term Suspension**

18 After A.T.'s outburst with Dean Grijalva on January 22, 2015, ESD called the police.
 19 TR. 135:8-13, 122:24-25. A.T. was charged with Assault in the 4th Degree and was detained
 20 in Denny Youth Center ("Denny") until February 2, 2015. *Id.*; Tr. 356:14-16.

21
 DEFENDANTS' OPPOSITION TO
 PLAINTIFF'S MOTION FOR SUMMARY
 JUDGMENT AND CROSS-MOTION FOR
 SUMMARY JUDGMENT- 15

Cassady Law PLLC
 506 Second Avenue, Suite 1400
 Seattle, Washington 98104
 Phone: 206-452-5665
 Fax: 206-299-9960

1 For the period of the forty-five day suspension, ESD did not provide a Prior Written
 2 Notice (PWN), IEP, or other written document describing any Interim Alternative
 3 Educational Setting (IAES) or educational services A.T. would receive while suspended. Tr.
 4 603:12; 607:1-608:2. ESD administrators subsequently assigned a tutor to instruct A.T. for
 5 the minimal amount of special education minutes specified in his IEP (one hour and fifteen
 6 minutes per week), albeit outside the IEP process. AR at 2488, Tr. 471:2-4; 484:20-24.
 7 However, A.T. eloped from home after the first meeting with the tutor, and tutoring was
 8 discontinued. AR at 2489; Tr. 474:14-15, 471:5-18, 472:11-14, 183:4-11. ESD staff
 9 believed they were not obligated to provide instruction during suspension beyond the special
 10 education minutes provided in the IEP, though many clearly believed A.T. needed more. AR
 11 at 1997, 2007-2008. However, on March 9, 2016, ESD administrators, again outside the IEP
 12 process, authorized ELearning for A.T. (independent study on a computer), despite A.T.'s
 13 dismal behaviors and performance in past computer labs and difficulties with independent
 14 study. A.T. never received ELearning. AR at 2014; 482:11-18.

15 After A.T.'s long-term suspension, A.T. spent a large amount of time at home with
 16 nothing to do and minimal to no educational services from ESD. Tr. 318:10-17. The Parents,
 17 probation office Leah Price, and MDHS school psychologist Sutton expressed concern that
 18 unstructured time without educational services would ultimately exacerbate A.T.'s behavioral
 19 issues. AR at 2002.

20 This is precisely what happened. As the Father explained, the terms of the ARY
 21 Order --- which included obeying home curfews, attending school, completing homework and

DEFENDANTS' OPPOSITION TO
 PLAINTIFF'S MOTION FOR SUMMARY
 JUDGMENT AND CROSS-MOTION FOR
 SUMMARY JUDGMENT- 16

Cassady Law PLLC
 506 Second Avenue, Suite 1400
 Seattle, Washington 98104
 Phone: 206-452-5665
 Fax: 206-299-9960

1 chores --- were incorporated as terms of A.T.'s probation once A.T. became involved with the
 2 juvenile justice system. Tr. 109:1-112:23. After A.T.'s expulsion, A.T.'s behaviors at home
 3 grew increasingly impulsive and aggressive, and he reacted with rage to Parents and ran away
 4 from home, violating terms of his probation. This in turn resulted in detention at Denny
 5 Juvenile Detention Center (Denny) from February 6-19, 2015 and February 25-March 3,
 6 2015. D1-27; Tr. 127:22-139:3. A.T. again ran away from home from March 4-10, 2015, and
 7 returned to Denny. Tr.139:4-140:1.

8 Between February 6-26, 2015, Probation Officer Leah Price repeatedly asked MDHS
 9 psychologist Sutton to help the Parents in seeking a psychological evaluation for A.T, to no
 10 avail. AR at 1998-1999. Therefore, Parents retained Dr. Stacy Cecchet themselves to assess
 11 A.T. AR at 2029-2030. At a meeting between Parents and Dr. Cecchet on April 22, 2015,
 12 she explained that A.T. needed residential placement. She told the Parents that if AT were
 13 accepted at Children's Study and Treatment Center (CSTC), A Washington State in-patient
 14 residential treatment center (CLIP), insurance and Medicaid might pay for the placement. Tr.
 15 272:20 - 273:13-16. Dr. Cecchet's report became available to the Plaintiff and the Parents on
 16 April 21, 2015. Tr. 144:18-25, Tr. 185:1-4.

17 Dr. Cecchet's report confirmed many preexisting diagnoses but added a new one:
 18 prodromal schizophrenia. AR at 2077. Recommendations included special education, school
 19 accommodations, and extensive related services (including clinical services from a licensed
 20 clinical psychologist, a treatment team to create a treatment plan with a licensed psychologist,
 21 medication management services, individual and family therapies, and behavioral training for

DEFENDANTS' OPPOSITION TO
 PLAINTIFF'S MOTION FOR SUMMARY
 JUDGMENT AND CROSS-MOTION FOR
 SUMMARY JUDGMENT- 17

Cassady Law PLLC
 506 Second Avenue, Suite 1400
 Seattle, Washington 98104
 Phone: 206-452-5665
 Fax: 206-299-9960

1 the Parents). AR at 2077- 2079. Cecchet recommended residential placement for the delivery
 2 of these services, *Id.*, testifying at hearing that “without residential care, A.T. would not be
 3 able to function in a school setting.” Tr. 1016:9-12. In a section called, “Hospitalization and
 4 Residential Treatment,” Cecchet noted “it may be necessary to hospitalize a young person if
 5 they are experiencing a crisis or their safety is at risk,” distinguishing this from her
 6 recommendation for residential placement through application to the Washington State CLIP
 7 program. AR 2079 *Id.*⁴

8 Dr. Cecchet testified that she recommended CSTC in her report and not a private
 9 residential school because finances were a limiting factor for the parents and CSTC accepts
 10 insurance and social benefits. RP 972:5- 972:16 (Cecchet).⁵

11 On April 29, 2016, ESD staff met to discuss various educational options for A.T.’s
 12 return to school, with Parents participating by phone. Despite divergent testimony, no one
 13 testified that a decision about the Student’s educational programming and placement was
 14 made at this meeting, or that an IEP or other formal written educational plan was submitted,
 15 discussed or generated, in draft or final form. Tr. 582:12-583:6; 587:1-20, 606:16; 299:20-

16 ⁴ A first episode of schizophrenia does not mean that schizophrenia is episodic with periods where
 17 psychosis disappears completely, as is the case with a manic episode in a person with bipolar disorder. Tr.
 18 937:2- 939:22 (Cecchet). With schizophrenia, a person never returns to baseline functioning after the first
 19 episode, even though there may be periods of exacerbation when hospitalization is required. *Id.*

20 ⁵ Dr. Cecchet is familiar with CSTC because she has worked there in the past. Tr. 927:5-927:16,
 21 1016:9-12. At CSTC students live in cottages on the campus and attend a full time school program run by
 22 the Clover Park School District, also within the campus. *Id.* Because CSTC’s program is a residential
 23 treatment center, the program is infused with behavior modification, medication management, and various
 24 therapies. *Id.* Therapies at CSTC include individual therapy, group therapy, family therapy, and milieu
 25 therapy. *Id.*

1 300:4; 265:5-16; 803:18-23;358:1-13; 301:11-23. Mother mentioned that A.T. wanted to
 2 attend Scriber Lake High School (“Scriber”), an ESD alternative school, not MDHS, because
 3 he was embarrassed about what had happened there and had a friend at Scriber. *Id.*; Tr.
 4 1077:22-1079:17; AR at 2093.

5 ESD conducted a May 7, 2015 meeting, without Parents present, at which ESD staff
 6 decided that A.T. would attend Scriber’s Student Transitional Education Program (“STEP”).
 7 Tr. 489:3-13, 585:20-23, 555:3-7, 806:8-15; 489:19-22. No witness testified that Dr.
 8 Cecchet’s evaluation was discussed at this meeting. A.R. 1-1103. ESD did not generate an
 9 IEP for the Student at the May 7, 2015 meeting, but did generate a PWN stating A.T. would
 10 attend the District’s alternative high school because of the need for more intensive instruction
 11 and rejecting return to a comprehensive high school with a larger student population due to
 12 Student’s very problematic activities. AR at 2104. The PWN did not mention residential
 13 placement as an option considered. *Id.* While Plaintiff contends that Parents were invited to
 14 the May 7th meeting, ALJ Mentzer found as a matter of (well-supported) fact that the Parents
 15 did not receive a May 7, 2015 meeting invitation or PWN. Tr. 149:2-19; AR 1124-1125 at
 16 ¶58.

17 ESD did not initiate a reevaluation of A.T. after receipt of Dr. Cecchet’s report, or
 18 before issuing the May 7, 2015 PWN placing A.T. at Scriber’s STEP. AR 2104. ESD staff
 19 explained at hearing that they did not initiate a reevaluation immediately because they needed
 20 an opportunity to observe A.T. first in the Scriber environment. Tr. 632:2-12, 808:1-14.
 21

DEFENDANTS’ OPPOSITION TO
 PLAINTIFF’S MOTION FOR SUMMARY
 JUDGMENT AND CROSS-MOTION FOR
 SUMMARY JUDGMENT- 19

Cassady Law PLLC
 506 Second Avenue, Suite 1400
 Seattle, Washington 98104
 Phone: 206-452-5665
 Fax: 206-299-9960

1 Although ESD did not change A.T.'s January 27, 2015 IEP before assigning A.T. to
 2 Scriber's STEP program, the assignment to Scriber changed A.T.'s educational program in a
 3 number of ways. MDHS is A.T.'s neighborhood school and a mainstream high school,
 4 whereas Scriber's STEP program is a transitional program for kids who struggle to attend
 5 school or make progress at school, Tr. 495:13-15. At Scriber STEP, all students attend a
 6 partial school day, *Id.*, whereas the January 27, 2015 IEP and placement at MDHS called for
 7 A.T. to attend a full school day. AR 1934. The STEP program consists of two staff
 8 members—a special education teacher instructing students in one classroom, and a
 9 paraeducator working with the same students doing individual study work in another
 10 classroom. Tr. 512:20-2; A.T.'s January 27, 2015 IEP calls for general education classrooms
 11 with typical peers the vast majority of the school day. AR 1924, 1934, 1935. Scriber is a
 12 much smaller school: it has 275 students but only a 64 percent attendance rate so there are
 13 about 170-180 students on campus each day. Tr. 519:20-24. A.T. was to have a 1:1 aide at
 14 Scriber (or at least this was discussed by the group on May 7, 2015; it was not committed in
 15 an IEP, PWN, or any other written document), whereas his January 27, 2015 IEP did not
 16 provide one. Tr. 508: 15-20; AR 1931, 1935.

17 Dr. Cecchet found Scriber's STEP program inappropriate, as A.T. needs school
 18 interventions in concert with medication management and therapeutic services. Tr. 987:16-
 19 998:5. With respect to the part-time nature of the STEP program, Cecchet testified that even a
 20 full-day school program would struggle to meet A.T.'s needs with the number of
 21 interventions he needs and his need for opportunities to practice those interventions. *Id.*

DEFENDANTS' OPPOSITION TO
 PLAINTIFF'S MOTION FOR SUMMARY
 JUDGMENT AND CROSS-MOTION FOR
 SUMMARY JUDGMENT- 20

Cassady Law PLLC
 506 Second Avenue, Suite 1400
 Seattle, Washington 98104
 Phone: 206-452-5665
 Fax: 206-299-9960

1 Moreover, Cecchet was concerned with the amount of unstructured time A.T. would have in
 2 the program, and the socialization he would receive with students with delinquent and
 3 criminal behavior, or transient students, given his qualitatively different disability-related
 4 needs. *Id.* Moreover, ESD staff expressed ambivalence, uncertainty, and non- commitment
 5 when it came to Scriber STEP for A.T.. Christine Sutton equivocated about the
 6 appropriateness of Scriber for A.T, at best. Tr. 866:5-866:25. The remainder of ESD staff
 7 described Scriber STEP as a place where school staff could “get to know” and observe A.T.
 8 before creating specific educational programming for him. Tr. 586:11-24, 503:5-9; 556:1-
 9 557:23.

10 On May 18, 2015, the Father took A.T. to Scriber for his first day of school since his
 11 long-term suspension on January 22, 2015. A.T. attended Scriber that day, but refused to
 12 return to Scriber, or to any ESD school, after that date. Tr. 552:9, 547:17, 151:20-152:18,
 13 186:7-12, 186:17-24; AT 1084:5-13. The Parents talked to MDHS staff about their
 14 unsuccessful attempts to get A.T. to attend school. Tr. 1081:12-17; 552:11-24, 533:14-534:6;
 15 AR at 2103-2104. Parents testified that they wanted help and never discouraged ESD staff
 16 from contacting them (despite ESD’s argument to the contrary). Tr. 1093:3-12, 1081:12-17.

17 **F. A.T. Would Not Attend School After the End of Ninth Grade, Until His Parents
 18 Enrolled Him at Provo Canyon Residential School**

19 Over the summer of 2015, A.T. continued to run away from home for longer and
 20 longer time periods. Tr. 187:12-18. There was only one other criminal offense committed
 21 after February of 2015, a shoplifting incident in September of 2015. Tr.142:23-13, 187:19-24.

1 Police took A.T. to Children's Hospital after apprehending him because there were orders to
 2 take him there for a psychological evaluation if he was picked up. *Id.*. Children's Hospital
 3 staff recommended, "Residential treatment, mental health, substance use or dual diagnosis."
 4 Tr. 187:25-188:25; AR 2156-2157.

5 A.T. would not attend school in the fall of his tenth-grade year (2015-2016), despite
 6 Parents' efforts to get him to go. Tr. 154:8-14. No ESD staff testified to efforts to contact
 7 A.T. or the family in the fall of 2015. *Id.* Scriber withdrew A.T. automatically on the fourth
 8 day of the 2015-2016 school year as a matter of routine procedure. Tr. 14:1-8. The Mother
 9 did not call ESD to discuss school refusal in the fall of 2015 because she had no new
 10 information from the school district, and understood this to mean the ESD had done
 11 everything they could. Tr. 1083:4-8.

12 The Parents understood that it takes a student about a year and a half to get into a
 13 CLIP program, if he or she is accepted into one at all. Tr. 267: 3-5. The Parents submitted the
 14 application to CLIP. Tr. 269:7-14 (Mother); P 134-7. Given the usual wait time, however,
 15 the Mother began in August of 2015 making calls to investigate different residential treatment
 16 centers, Tr. 267: 5-8, 292:24-25 (Mother). Provo accepted the Student but the Parents'
 17 insurance would not cover the placement, stating that it was not for medical reasons; the
 18 Parents nonetheless enrolled him there at their own expense. Tr. 277: 3-9.

19 Parents met with education counsel for the first time on November 30, 2015. Tr.
 20 154:25. Subsequently, Parents gave written notice to ESD of their intent to place A.T. in a
 21 residential school and seek reimbursement for all expenses related to the placement, on

DEFENDANTS' OPPOSITION TO
 PLAINTIFF'S MOTION FOR SUMMARY
 JUDGMENT AND CROSS-MOTION FOR
 SUMMARY JUDGMENT- 22

Cassady Law PLLC
 506 Second Avenue, Suite 1400
 Seattle, Washington 98104
 Phone: 206-452-5665
 Fax: 206-299-9960

1 December 1, 2015. Tr. 155:6-23; AR at 2168, 2333-2334. A.R. entered Provo on December
 2 14, 2015. Tr.277:19.

3 **G. The Administrative Law Judge Correctly Found Provo Canyon an Appropriate
 Placement for A.T.**

4 Provo is a therapeutic residential school in Utah that provides a comprehensive and
 5 integrated educational, medication management, behavior intervention, and therapeutic
 6 program. Provo provides individual therapy, group therapy, recreational therapy, medication
 7 management, staff trained in behavioral medication techniques and a full time school staffed
 8 largely by special education teachers.

9 All of Provo Canyon School's students have individual treatment teams that meet
 10 at least once a month to review the student's progress for periods of time that may vary
 11 but tend to be 15-20 minutes per student. AR 234. The treatment team consists of a
 12 representative from the Medical department, the Student Life department, the Clinical
 13 department and the Education department. *Id.*

14 At the treatment team meeting, staff from each department discuss how the student
 15 is doing in his or her department, discuss his progress and needs, and brainstorm about
 16 any needed changes in approaches and programming for the student. *Id.* When the
 17 meeting is over, each representative takes recommendations and important information
 18 from other departments back to staff in the respective department he or she comes from so
 19 services are interdisciplinary and coordinated. *Id.*

21
 DEFENDANTS' OPPOSITION TO
 PLAINTIFF'S MOTION FOR SUMMARY
 JUDGMENT AND CROSS-MOTION FOR
 SUMMARY JUDGMENT- 23

Cassady Law PLLC
 506 Second Avenue, Suite 1400
 Seattle, Washington 98104
 Phone: 206-452-5665
 Fax: 206-299-9960

1 Provo provides a fully endorsed, full time, year-round school on a trimester system,
 2 serving middle and high school boys. AR at 2339. The school is an accredited special
 3 education school by Northwest Accreditation. Tr. 720. All of the teachers are either
 4 certificated in special education or in the process of taking courses to become certificated in
 5 special education (there are 16 teachers total, with 3 working on their certification). Tr. 703:
 6 5-9, 721:19-23. Students attend school from 8:45 am to 3:20 pm with eight periods. AR
 7 2340. Class sizes are not bigger than 15, and A.T.'s classes range from 8-10 students. In
 8 order to carefully monitor student progress in school and address any deficits in school
 9 performance quickly, Provo Canyon provides constant grade checks and grades over
 10 graduated levels every two weeks. AR at 2340.

11 Many of Provo School's students have behavior issues. AR at 2340, 2327, 2329.
 12 Classrooms are small and very structured to encourage appropriate behaviors. *Id.* If a
 13 student exhibits behaviors in class, they are first prompted within the classroom itself. *Id.*
 14 If prompting does not stop the behavior, then the student may be asked to leave the
 15 classroom. *Id.* There are at least three Student Life staff present in the school building at
 16 all times so they are always available to process behavioral issues with a student who has
 17 been removed from class until the student is ready to rejoin the class. *Id.* There are
 18 additional Student Life staff present a phone call away on campus so educational staff can
 19 summon as many as five additional Student Life staff to the school building if needed. *Id.*
 20
 21

DEFENDANTS' OPPOSITION TO
 PLAINTIFF'S MOTION FOR SUMMARY
 JUDGMENT AND CROSS-MOTION FOR
 SUMMARY JUDGMENT- 24

Cassady Law PLLC
 506 Second Avenue, Suite 1400
 Seattle, Washington 98104
 Phone: 206-452-5665
 Fax: 206-299-9960

1 Even the more intensive therapeutic aspect of the program supports A.T. in his
 2 education. If intervention outside the classroom by Student Life staff proves insufficient
 3 to permit the student to reenter the classroom, the student goes to the Stabilization and
 4 Assessment area where behavior is reviewed and the student is able to process behavioral
 5 and emotional issues with a psychiatrist and therapist and work their way back to the
 6 school area. AR at 2340-2341, 2327-2328 ¶6. While in the Stabilization and Assessment
 7 area, students receive educational instruction from teachers who leave the school to go to
 8 the Stabilization and Assessment area to teach their particular class that the student is
 9 missing by not being at school. This keeps students from falling behind academically
 10 while they are in the Stabilization and Assessment area. Instruction involves a high
 11 teacher: student ratio in the Stabilization and Assessment area, often 1:1. *Id.*

12 A.T. participates in group and individual therapy. Students participate in therapy
 13 groups from 3:20 pm to 4:00 pm, after school is over. AR 2340. Alex also participates in
 14 one individual therapy session per week and one family session per week, with his parents
 15 participating by phone. AR 2345. A.T.'s family and individual therapist is a masters
 16 level clinician in Marriage and Family therapy. *Id.* AT's therapist testified to
 17 improvement in group therapy, in the sense that A.T. had become more polite, more
 18 attentive and more cooperative in groups. AR 2346. AT's Provo therapist testified that he
 19 was moving through the emotional growth program at Provo, called the "Five Stages of
 20

21
 DEFENDANTS' OPPOSITION TO
 PLAINTIFF'S MOTION FOR SUMMARY
 JUDGMENT AND CROSS-MOTION FOR
 SUMMARY JUDGMENT- 25

Cassady Law PLLC
 506 Second Avenue, Suite 1400
 Seattle, Washington 98104
 Phone: 206-452-5665
 Fax: 206-299-9960

1 Change" curriculum, having reached completed Level 1 and most of Level 2 on a 5 level
 2 program at the time of hearing, roughly five months after entry. *Id.*

3 At hearing, numerous witnesses testified about A.T.'s progress at Provo. A.T.'s
 4 grades and school participation improved tremendously at Provo Canyon. In his first semester
 5 he earned a B in Art Foundation 2, an A in Geometry, a B- in English, a B in U.S. History, an
 6 A- in PE, and an A- in Physical Science. AR at 2427-2432. As noted, clinical staff testified
 7 to emotional and behavioral improvement. A.T. reports to his Mother that he enjoys school;
 8 writes to the Parents and sends copies of his report card and is excited to calculate his GPA;
 9 and reports studying all night. In family counseling sessions, he states that he plays sports
 10 with other students at the school, and is working on his social skills so he can have more
 11 friends. Tr. 278:2-9 (Mother).

12 Dr. Cecchet is familiar with Provo Canyon School, and testified to its appropriateness
 13 for A.T. Tr. 970:22 - 974:21. Dr. Cecchet visited the school on April 18, 2016, meeting with
 14 the Director, touring the facility, meeting with the treatment team, and observing the Student.
 15 *Id.* Dr. Cecchet compared Provo Canyon to CSTC. *Id.* Provo Canyon has a stronger
 16 academic program and is preferable to CSTC in this respect. *Id.* At CSTC, the students work
 17 in one classroom but at Provo Canyon there are multiple classrooms with more subjects
 18 taught and extracurricular type activities. *Id.* Both programs have integrated individual
 19 therapy, group therapy, family therapy, milieu therapy, behavior intervention, and psychiatric
 20 services. *Id.*

21
 DEFENDANTS' OPPOSITION TO
 PLAINTIFF'S MOTION FOR SUMMARY
 JUDGMENT AND CROSS-MOTION FOR
 SUMMARY JUDGMENT- 26

Cassady Law PLLC
 506 Second Avenue, Suite 1400
 Seattle, Washington 98104
 Phone: 206-452-5665
 Fax: 206-299-9960

1 **H. Cecchet's Testimony Regarding the Educational Implications of A.T.'s Disabilities
2 and Educational Need for Residential Placement**

3 Psychologist Stacy Cecchet explained at hearing how A.T.'s educational needs are
4 interwoven with his social, emotional, medical and behavioral needs such that he needs
5 residential placement, and Plaintiff presented no testimony to the contrary. AR 1-1131.

6 According to Dr. Cecchet A.T.'s combination of ADHD, schizophrenia and
7 attachment issues created a "perfect storm" for his truancy and other school issues. Tr.
8 940:22-944:23.

9 Schizophrenia impacts cognitive organization. Tr. 934:1-25, 936:22-25. *Id.* If you
10 are seeing things other people aren't seeing, hearing things other people aren't hearing, and
11 thinking highly unusual thoughts, it is going to be very difficult to maintain an age
12 appropriate focus on an academic setting, class participation, social participation, homework
13 completion, etc. *Id.* If you are already cognitively disorganized from an unstable personality
14 from early abuse and neglect, experiencing unusual sensory experiences and thoughts will
15 only make the situation worse. *Id.* Student also has ADHD. *Id.* So essentially, he acts
16 impulsively. *Id.*

17 Cecchet described how these conditions affect A.T.'s thought processes with respect to
18 truancy and school elopement. Impulsivity from ADHD limits A.T.'s ability to inhibit poor
19 choices like leaving home because he's mad or to engage in preferred activities. Tr. 942:7-
20 944:23. Then, A.T. is on the street with transient individuals. Even if Student thinks, "it's
21 getting late, I should go home," he may immediately think something else and lose focus on

1 getting home. *Id.* Or he may be so cognitively disorganized [from schizophrenia, childhood
 2 abuse and neglect] that he really doesn't know how to get himself home. Neurotypical
 3 individuals take for granted how easy it is to formulate and follow the sequential steps to get
 4 home, but A.T. cannot do this. *Id.* And all these issues, and A.T.'s social issues, put him at
 5 risk for not being able to make friends easily, and therefore "falling in with the wrong
 6 crowd." Tr. 945: 5-21, 946:24 - 948:24. Dr. Cecchet opined that this very clearly happened
 7 in the Student's case. He turned to spending time with a transient population living in parks
 8 and on the streets. *Id.*

9 Dr. Cecchet recommended residential placement in her report due to "significantly
 10 worsening dangerous behavior and elopement." Tr. 969:14-970. Cecchet testified to a
 11 relationship between this and Student's educational needs. *Id.* The Student cannot participate
 12 appropriately in the educational environment, complete homework, and attend class, nor can
 13 he learn the social skills necessary to participate in a classroom environment, if he is
 14 struggling so much with cognitive disorganization that he's truant and eloping for longer and
 15 longer periods of time. *Id.* Dangerous behavior was also impacting Student's school
 16 participation as the level of his aggressive behavior at school increased over time and
 17 ultimately led to long term suspension. *Id.*

18 III. ARGUMENT

19 A. Standard of Review

20 In an appeal of a due process administrative decision brought under 20 USC
 21 §1415(i)(2), the court must receive the record of the administrative proceedings, hear

DEFENDANTS' OPPOSITION TO
 PLAINTIFF'S MOTION FOR SUMMARY
 JUDGMENT AND CROSS-MOTION FOR
 SUMMARY JUDGMENT- 28

Cassady Law PLLC
 506 Second Avenue, Suite 1400
 Seattle, Washington 98104
 Phone: 206-452-5665
 Fax: 206-299-9960

1 additional evidence at the request of a party, and base its decision on the preponderance of the
 2 evidence. 20 USC §1415(i)(2)(B). The Supreme Court has held that "due weight" must be
 3 given to the administrative proceedings. *Bd. of Educ. v. Rowley*, 458 U.S. 176, 206 (1982).
 4 The court should afford deference where the ALJ's findings are "thorough and careful," *L.M.*
 5 *v. Capistrano Unified Sch. Dist.*, 556 F.3d 900, 908 (9th Cir. 2009), and the ALJ demonstrates
 6 "careful, impartial consideration of all the evidence and demonstrates his sensitivity to the
 7 complexity of the issues presented." *Cnty. of San Diego v. Cal. Special Educ. Hearing Office*,
 8 93 F.3d 1458, 1466-67 (9th Cir. 1996).

9 **B. Statutory Framework of IDEA**

10 The Individuals with Disabilities Education Improvement Act ("IDEA") provides
 11 disabled students a right to a free and appropriate public education ("FAPE"). 20 USC §1400
 12 et seq., 34 CFR 300 *et. seq.*. The statute mandates, through a series of procedural regulations,
 13 an educational process designed to assure that a student received an appropriate education. 20
 14 USC §1414 - §1415. First, a statutorily prescribed "IEP team" conducts an evaluation that
 15 determines the educational needs of the child. 20 USC §1414 (a)-(c). The evaluation results
 16 form the basis for the IEP team's development of a written educational plan for the student,
 17 called an Individualized Education Plan ("IEP"). *Id.*, 1414(a)(1)(C)(I). The statute sets out
 18 precise educational processes for development of an IEP. 20 USC §1414(d). The IEP is the
 19 "primary vehicle" for implementing the underlying goals of the statute. *Honig v. Doe*, 484
 20 U.S. 305, 311, 108 S. Ct. 592, 597 (1988). It is the IEP that sets forth the student's current
 21 educational performance, articulates a set of annual goals and short-term objectives in

DEFENDANTS' OPPOSITION TO
 PLAINTIFF'S MOTION FOR SUMMARY
 JUDGMENT AND CROSS-MOTION FOR
 SUMMARY JUDGMENT- 29

Cassady Law PLLC
 506 Second Avenue, Suite 1400
 Seattle, Washington 98104
 Phone: 206-452-5665
 Fax: 206-299-9960

1 furtherance of those goals, and identifies the special education and other services necessary to
 2 help the student achieve those goals. *Honig*, 484 U.S. at 311, 108 S. Ct. at 597-98, 20 USC
 3 §1414(d)(1)(A)(i).

4 IDEA also provides parents of disabled students a right to participate in the
 5 educational process the statute mandates. 20 USC §1415(f)(3)(E)(ii)(II). In addition to
 6 procedural regulations designed to assure an appropriate education to students with
 7 disabilities, IDEA includes procedural regulations intended to assure parental participation in
 8 the educational process, including for example that parents be part of the evaluation team, the
 9 IEP team, and that they receive Prior Written Notice when a school district acts or fails to act
 10 with respect to the delivery of FAPE to a student. 20 USC 1414, 1415 (e.g. § 1415(b)(1) and
 11 (3), (d)(1)(A), (f) and §1414(a)(1)(D), (b)(1), (b)(4)(A) and (B), (c)(3), (d)(1)(B)(i).

12 A school district violates IDEA if it fails to provide a substantive free and appropriate
 13 public education to a student. To meet its substantive obligation under the IDEA, a school
 14 must offer an IEP “reasonably calculated to enable a child to make progress appropriate in
 15 light of the child’s circumstances.” *Endrew F. v. Douglas County Sch. Dist.*, 580 U.S. ____
 16 (2017).

17 A school district also violates IDEA if it fails to follow one or more procedural
 18 regulations and that failure has a substantive impact. There is a substantive impact if the
 19 procedural violation impedes the student's receipt of a free and appropriate public education,
 20 results in a deprivation of educational benefit to the student, or significantly excludes the
 21 parents from the educational process. §1415(f)(3)(E)(ii)(I) - (III).

DEFENDANTS' OPPOSITION TO
 PLAINTIFF'S MOTION FOR SUMMARY
 JUDGMENT AND CROSS-MOTION FOR
 SUMMARY JUDGMENT- 30

Cassady Law PLLC
 506 Second Avenue, Suite 1400
 Seattle, Washington 98104
 Phone: 206-452-5665
 Fax: 206-299-9960

1 The Supreme Court set forth a two-pronged test for reimbursement for a unilateral
 2 private placement in *Florence County School District Four v. Carter*, 510 U.S. 7 (1993).
 3 First, a federal court must conclude that the public school placement violated the IDEA,
 4 essentially determining that a substantive denial of FAPE occurred. Second, the court must
 5 determine that the private placement Parents seek as a remedy is proper under the IDEA. *Id.*

6 **C. A.T.'s Placement at Provo Canyon Served Educational Needs Indivisible from and
 7 Intertwined with Behavioral, Social and Medical Needs**

8 **1. The Legal Standard for Residential Placement**

9 The Ninth Circuit standard for school district placement of a disabled child in a
 10 residential school focuses on whether the placement is necessary in order to meet the
 11 student's educational needs, or whether the placement is a response to medical, social, or
 12 emotional problems "quite apart from the learning process." *Ashland School Dist. v. Parents*
 13 *of Student R.J.*, 588 F.3d 1004, 1010 (9th Cir. 2009), *citing Clovis Unified Sch. Dist. v.*
 14 *California Office of Administrative Hearings*, 903 F.2d 635, 643 (9th Cir. 1990). *See also* 34
 15 CFR §300.104.

16 Requiring residential placement for some students is consistent with IDEA's statutory
 17 requirement that special education students receive "related services... as may be required to
 18 assist a child with a disability to benefit from special education." 20 USC §1401(26)(a). *See*

1 also 34 CFR § 330.17 (“free appropriate public education means special education and
 2 related services ...). The term “related services” includes a wide array of supportive services.⁶
 3 A residential placement consists essentially of special education supported by an extensive
 4 and integrated package of related services, typically including individual counseling, group
 5 counseling, recreational therapy, room and board, and 24/7 behavioral counseling.

6 In assessing whether a placement, including a residential placement, is necessary to
 7 meet a student’s educational needs under the IDEA, it should be noted that the IDEA does not
 8 solely consider a student’s academic achievement; indeed, the definition of “educational
 9 needs” under IDEA includes “academic” *and* “functional” needs. 34 CFR §300.320(a)(1)
 10 and (6)(i); 300.324(a)(4). *See also E.R.K. v. State Dep’t of Education*, 728 F.3d 982, 990 (9th
 11 Cir. 2013); In *Seattle Sch. Dist.v. B.S.*, 82 F.3d 1493, 1500 (1996)(“term ‘unique educational
 12 needs’ shall be broadly construed to include the handicapped child’s academic, social, health,
 13 emotional, communicative, physical and vocational needs.”).

14

15

16

17 ⁶ Related services include [T]ransportation, and such developmental, corrective, and other
 18 supportive services (including speech-language pathology and audiology services, interpreting services,
 19 psychological services, physical and occupational therapy, recreation, including therapeutic recreation,
 20 social work services, school nurse services designed to enable a child with a disability to receive a free
 appropriate public education as described in the individualized education program of the child, counseling
 services, including rehabilitation counseling, orientation and mobility services, and medical services, except
 that such medical services shall be for diagnostic and evaluation purposes only) as may be required to assist
 a child with a disability to benefit from special education, and includes the early identification and
 assessment of disabling conditions in children. *Id.*

21

DEFENDANTS’ OPPOSITION TO
 PLAINTIFF’S MOTION FOR SUMMARY
 JUDGMENT AND CROSS-MOTION FOR
 SUMMARY JUDGMENT- 32

Cassady Law PLLC
 506 Second Avenue, Suite 1400
 Seattle, Washington 98104
 Phone: 206-452-5665
 Fax: 206-299-9960

2. The Administrative Court Followed Ninth Circuit Precedent in Awarding Residential Placement

Plaintiff relies on the Ninth Circuit’s decisions in *Ashland School District v. Parents of Student E.H.*, and *Ashland School District v. Parents of Student R.J.* (“E.H.” and “R.J.”) for the proposition that A.T.’s issues manifested off school grounds, were medical in nature, and thus were separate and apart from the educational process. Both cases are distinguishable from the case at bar, and thus the ALJ did not err in her application of them.

Plaintiff, on the other hand, implicitly urges this Court to adopt an incorrect legal standard, namely that a medical diagnosis requiring mental health treatment *ipso facto* renders a residential placement non-educational. Plaintiff argues that A.T. needed Provo Canyon solely for medical reasons because (1) psychologist Stacy Cecchet testified that while Student's behavior may have been impulsive at first it became more congruent with the other mental health symptoms of schizophrenia; (2) a doctor at Children's Hospital in Seattle also recommended residential treatment for mental health reasons; (3) Dr. Cecchet initially recommended a residential placement (CSTC) providing intensive inpatient treatment.

Plaintiff Edmonds School District's Motion for Summary Judgment (Pff. Motion) at 21-22.

In urging this Court to reverse the administrative court on these grounds the Plaintiff disregards entirely IDEA's fundamental requirement that school districts provide educational services to address mental health and medical needs that have a detrimental impact on a student's education. *See* 34 CFR §300.8.

DEFENDANTS' OPPOSITION TO
PLAINTIFF'S MOTION FOR SUMMARY
JUDGMENT AND CROSS-MOTION FOR
SUMMARY JUDGMENT- 33

Cassady Law PLLC
506 Second Avenue, Suite 1400
Seattle, Washington 98104
Phone: 206-452-5665
Fax: 206-299-9960

1 Far from placing A.T. outside the realm of IDEA's protection, schizophrenia is
2 explicitly included within the definition of Emotional Disturbance, one of the eligibility
3 categories of IDEA. 34 CFR § 300.8(c)(4)(ii). While a student's schizophrenia must also
4 detrimentally impact him educationally to trigger IDEA eligibility, the District repeatedly
5 concedes that A.T.'s schizophrenia did exactly this. ("the student performed well
6 academically prior to the onset of his prodromal schizophrenia", *Pff. Motion* at 20:8; "the
7 Student's progress from year to year and his high academic capability when he is mentally
8 stable demonstrates what when medical issues are not a factor, he can and does benefit from
9 the educational services and the general education setting at the District." *Id.* at 27:4-9)

10 Cutting to crux of the matter, the administrative court correctly observed:

11 The District cannot insulate itself from the medical problems of its
12 students. If those medical problems prevent the students from
13 benefitting from an education without certain services in the
14 educational setting, then the District must provide those services.
15 The District's argument... is akin to a district arguing that it should
16 not have to fund a nurse to serve a medically fragile student who
17 needs a nurse in class in order to attend school. If medical issues
18 were not a factor, that student could easily benefit from the
19 educational services the District offers.... Similarly, if psychiatric
issues were not a factor, the Student here easily has the intellectual
ability to benefit from the District's placement. Sadly, students
cannot be separate from their disabilities. The District must take
students as it finds them, and provide the related service of nursing
(for the medically fragile student) and the environment of a
residential placement (for the Student here). Because if these
services are not provided, neither of these students will receive any
benefit from their education.

20 AR 1138 at ¶9.

21
DEFENDANTS' OPPOSITION TO
PLAINTIFF'S MOTION FOR SUMMARY
JUDGMENT AND CROSS-MOTION FOR
SUMMARY JUDGMENT- 34

Cassady Law PLLC
506 Second Avenue, Suite 1400
Seattle, Washington 98104
Phone: 206-452-5665
Fax: 206-299-9960

1 The fact that Dr. Cecchet initially recommended placement at a CLIP facility, CSTC,
 2 likewise does not render Provo a non-educational, medical placement for two reasons: (1)
 3 Provo is not a medical placement under the standards set forth in *Clovis*, the Ninth Circuit
 4 seminal case distinguishing medical and non-medical placements; and (2) Dr. Cecchet's
 5 testimony clearly identifies features associated with a non-medical placement under *Clovis* as
 6 features needed by the Student, specifically distinguishing in her report the recommendation
 7 for periodic hospitalization to address an acute crisis from A.T.'s longer term need for
 8 residential treatment.

9 In *Clovis*, the parents placed the student in an "acute care psychiatric hospital" called
 10 Kings View Hospital and sought reimbursement from their school district for the costs of the
 11 placement, characterizing it as a residential placement under IDEA. 903 F.2d at 639. The
 12 school district "agree[d] that a residential placement of some kind [was] necessary" and
 13 agreed that "a highly structured and integrated program of regularly scheduled psychological
 14 services, including psychotherapy, [was] needed for [the student] to benefit from any
 15 educational program." *Id. at 641*. However, the school district asserted that it was not
 16 required to pay for a "psychiatric hospitalization because that type of placement is a response
 17 to a medical rather than an educational need and is not the type of residential program
 18 contemplated under the Act." *Id.*

19 The Ninth Circuit agreed, and in doing so set forth criteria distinguishing a medical
 20 from an educational placement: (1) whether the hospitalization occurs because of an "acute"
 21 psychiatric crisis *Id. at 645*; (2) receipt of minimal hours of classroom instruction a day (two

DEFENDANTS' OPPOSITION TO
 PLAINTIFF'S MOTION FOR SUMMARY
 JUDGMENT AND CROSS-MOTION FOR
 SUMMARY JUDGMENT- 35

Cassady Law PLLC
 506 Second Avenue, Suite 1400
 Seattle, Washington 98104
 Phone: 206-452-5665
 Fax: 206-299-9960

1 hours per day in *Clovis*) *Id.* at 646.; (3) whether the amount of time spent in the classroom is
 2 determined by hospital staff and is dependent upon non-academic treatment needs, *Id.* at 645;
 3 (4) whether the student's overall program is designed by a medical team, *Id.*; (5) whether a
 4 student receives high amounts of psychotherapy, suggesting services are "medical" insofar as
 5 they address a "medical crisis" (six hours per day of intensive psychotherapy in *Clovis*), *Id.*;
 6 (6) whether the placement is under the jurisdiction of a government body concerned with
 7 health services (the hospital in *Clovis* was under the State Department of Health Services) *Id.*
 8 at 646; (7) whether the placement is included as an educational option for handicapped
 9 students by the state (the hospital in *Clovis* was not). *Id.*; (8) whether educational services are
 10 provided by the institution itself or the local school district. *Id.* at 646.

11 Under *Clovis*, Provo is an educational, not a medical, placement. Provo is accredited
 12 as a school. Parents' insurance refused to pay for Provo because it did not meet the medical
 13 necessity standard. A.T. was not placed there for a temporary, acute medical crisis, but based
 14 upon two years of constant regression in academic and functional performance. A.T. attends
 15 school at Provo for a standard school day, five days a week. He attends a moderate amount
 16 of group therapy in the afternoons when school is over, with an additional session of
 17 individual therapy and family therapy a week. A.T.'s program at Provo is designed by an
 18 interdisciplinary treatment team consisting of medical staff, counselors, teachers, and
 19 dormitory ("student life") staff.

20 Moreover, Dr. Cecchet's recommendation of CSTC did not imply a belief that A.T.'s
 21 medical needs were separable from his educational needs. In her report recommendations,

DEFENDANTS' OPPOSITION TO
 PLAINTIFF'S MOTION FOR SUMMARY
 JUDGMENT AND CROSS-MOTION FOR
 SUMMARY JUDGMENT- 36

Cassady Law PLLC
 506 Second Avenue, Suite 1400
 Seattle, Washington 98104
 Phone: 206-452-5665
 Fax: 206-299-9960

1 Dr. Cecchet distinguished the need for “hospitalizations” should A.T. be experiencing a
 2 “crisis” from enrollment at CLIP/CSTC due to “significant worsening behavior and
 3 elopement.” She testified to the interwoven relationship between Student’s “significant
 4 worsening behavior and elopement” and his disabilities and educational needs. Dr. Cecchet
 5 testified that she recommended CSTC instead of a private residential school not because it
 6 was “medical” in nature but because finances were a limiting factor for the Parents and CSTC
 7 accepted insurance and social benefits. Dr. Cecchet’s testimony emphasized the similarities
 8 between CSTC and Provo in non-medical services: both programs have full time school
 9 services; students live together in dorms at Provo and cottages at CSTC; both programs
 10 provide individual therapy, group therapy, family therapy, milieu therapy, behavior
 11 intervention services and psychiatric services. Ultimately, Dr. Cecchet expressed a
 12 preference for Provo because of its stronger academic program.

13 The sole Ninth Circuit case Plaintiff cites to suggest Provo serves exclusively medical
 14 purposes is *E.H.*, but *E.H.* bears little factual resemblance to our own case. 587 F.3d 1175
 15 (9th Cir. 2009). In *E.H.*, the student maintained good grades, and there is no reference to
 16 pronounced behavioral problems at school. *Id. at* 1179. However, the student suffered from
 17 depression and repeatedly attempted or imagined suicide, resulting in short term
 18 hospitalizations. *Id.* After a hospitalization in December of ninth grade for suicidal tendencies
 19 and threatening to hurt family members, the parents enrolled the student in Youthcare, a
 20 residential facility. *Id.* The parents did not provide reimbursement notification or even
 21 oppose the student’s IEPs before enrolling the student at Youthcare, leaving school personnel

DEFENDANTS’ OPPOSITION TO
 PLAINTIFF’S MOTION FOR SUMMARY
 JUDGMENT AND CROSS-MOTION FOR
 SUMMARY JUDGMENT- 37

Cassady Law PLLC
 506 Second Avenue, Suite 1400
 Seattle, Washington 98104
 Phone: 206-452-5665
 Fax: 206-299-9960

1 with the impression that the student would be entering residential school to address emotional
 2 and not scholastic issues. *Id.* at 1179, 1185. Moreover, the parents' caseworker testified that
 3 parents reported they were seeking residential placement because of issues at home, not
 4 school. *Id.* at 1185. Once at Youthcare, the student was unable to complete much schoolwork
 5 for the first six months because of emotional issues. *E.H. Id.* at 1185.

6 *A.T.* on the other hand exhibited behavioral difficulties from preschool and ---
 7 beginning with the onset of prodromal schizophrenia in the ninth grade --- failed classes,
 8 disrupted classes, refused to do school work, left classes without permission, wandered the
 9 halls, did bizarre things such as hiding in the girl's restroom, and ultimately was suspended
 10 for 45 days for bring a wrist rocket and ball bearings to class, after which he refused to attend
 11 school at all.

12 A Ninth Circuit residential placement case far closer factually to our own is *Seattle*
 13 *Sch. Dist. v. B.S.*, 82 F.3d 1493 (9th Cir. 1996), in which the court affirmed residential
 14 placement at Intermountain for a student adopted from an abuse and neglect background
 15 whose behaviors disrupted and impeded her ability to function at school, despite her ability to
 16 perform well on standardized tests because of high intelligence. In *Seattle Sch. Dist. v. B.S.*,
 17 the Ninth Circuit noted:

18 Finally, the School District asserts that it should not be responsible
 19 for the costs of Intermountain because Intermountain is essentially
 20 a "medical" rather than an "educational" program. To the contrary,
 21 Intermountain is an accredited educational institution under state
 law. Witnesses testified that it is not a psychiatric hospital and is
 not based on a "medical model." That A.S.'s disability, like most
 disabilities under the IDEA, stems from medical or psychiatric

DEFENDANTS' OPPOSITION TO
 PLAINTIFF'S MOTION FOR SUMMARY
 JUDGMENT AND CROSS-MOTION FOR
 SUMMARY JUDGMENT- 38

Cassady Law PLLC
 506 Second Avenue, Suite 1400
 Seattle, Washington 98104
 Phone: 206-452-5665
 Fax: 206-299-9960

disorders, and that Intermountain's program addresses these disorders in an attempt to ensure that A.S. is able to benefit from her education, does not render the program invalid or remove the District's financial responsibility.

Id. at 1402.

Plaintiff's assertion that behaviors and adaptive functioning at home, and not academic and functional performance at school, necessitated residential placement at Provo is likewise not supported by the record in this case. AR 1-1103.

Plaintiff cites one Ninth Circuit case in support of this position, *R.J.*, but the facts of *R.J.* are easily distinguished from our own case. *R.J.* involved a student with ADHD who had also been diagnosed with adjustment disorder because of the anger she felt about her parent's divorce and conflicts with her boyfriend. 588 F.3d at 1006. She began self-harming and parents decided to keep her at home. *Id.* When she was back at school, she began sneaking out to see males and had a relationship with an adult male. *Id.* She had begun to make progress at school and with her work completion, and earned good grades. *Id.* at 1006-1007. She was not disruptive in school, only at home. *Id.* at 1010. However, her parents expressed concerns at an IEP meeting about *R.J.*'s defiant behavior at home and her relationships with men, and then enrolled her in a residential school without providing reimbursement notification to the school district. *Id.* at 1007.

Unlike the student in *R.J.*, A.T. is not a student who was acting out and defiant solely at home but otherwise a passable student—he had long-standing issues at school. His parents did not seek out residential treatment solely to prevent him from having inappropriate

DEFENDANTS' OPPOSITION TO
PLAINTIFF'S MOTION FOR SUMMARY
JUDGMENT AND CROSS-MOTION FOR
SUMMARY JUDGMENT- 39

Cassady Law PLLC
506 Second Avenue, Suite 1400
Seattle, Washington 98104
Phone: 206-452-5665
Fax: 206-299-9960

1 relationships. In addition, at school, A.T.'s IEPs and BIPs always reflected a need for
 2 behavioral and social intervention at school, not just at home.

3 In relying exclusively on *R.J.* and *E.H.*, the Plaintiff disregards other Ninth Circuit
 4 cases that are factually similar to A.T.'s, where reimbursement for residential placement was
 5 found appropriate and where the student's academic, behavioral, social, functional and
 6 medical needs were similarly intertwined: *Seattle Sch. Dist. v. B.S.*, 82 F.3d 1493 (9th Cir.
 7 1996) (Student with pre-adoption history of neglect, physical and sexual abuse, and
 8 abandonment; diagnosed with attachment disorder, conduct disorder, ODD and histrionic
 9 personality; high intelligence and high scores on achievement tests; significant behavioral
 10 issues at school, unsuccessful special education placement and expulsion); *Taylor v. Honig*,
 11 910 F.2d 627 (9th Cir. 1990) (affirming lower court award of residential placement based in
 12 part on need to address truancy, where school district failed to offer an appropriate program
 13 and student repeated periods of juvenile detention); *Capistrano Unified Sch. Dist.*, 59 F.3d
 14 884 (9th Cir. 1995) (Student with history of febrile seizures causing hyperactivity, learning
 15 and behavioral difficulties, hospitalized based on aggression in the home; doctors
 16 recommended a highly structured day placement or residential placement; student failed in
 17 various special education placements at school; immediately prior to parents' unilateral
 18 placement in a residential program the school reduced special education services).

19 Moreover, only one current formal evaluation of A.T. existed in this case at the time
 20 of hearing, and the evaluator, Dr. Cecchet, testified extensively about the combined effects of
 21 schizophrenia, ADHD, and childhood abuse and neglect on A.T.'s ability to self-regulate and

DEFENDANTS' OPPOSITION TO
 PLAINTIFF'S MOTION FOR SUMMARY
 JUDGMENT AND CROSS-MOTION FOR
 SUMMARY JUDGMENT- 40

Cassady Law PLLC
 506 Second Avenue, Suite 1400
 Seattle, Washington 98104
 Phone: 206-452-5665
 Fax: 206-299-9960

1 organize behavior, make choices, seek out relationships, attend school and complete work.
 2 She carefully explained why A.T. needed residential placement to address those needs.
 3 Despite ample notice that A.T.'s needs changed in January of 2015, the ESD last evaluated
 4 this student in 2013. No current evaluation or evaluator for ESD made any different
 5 recommendations for placement than Cecchet, during the educational process or at the
 6 administrative hearing. In fact, ESD witnesses testified to uncertainty about the nature of
 7 A.T.'s needs at hearing. None took issue with Cecchet's evaluation, and in fact staff referred
 8 to the evaluation as illuminating, and Dr. Cartwright testified that she agreed with it. As
 9 such, Cecchet's recommendations for residential placement to address educational needs, her
 10 opinion that Provo Canyon is an appropriate educational placement, as well as her diagnoses
 11 and testimony concerning the relationship between the student's disability and educational
 12 needs are entitled to some deference.

13 **D. The Placement at Provo Canyon is Proper under the IDEA**

14 The U.S. Supreme Court set forth a two-pronged test for reimbursement for a
 15 unilateral private placement in *Florence County School District Four v. Carter*, 510 U.S. 7
 16 (1993). Under the second prong, the *Carter* court held that a private school placement could
 17 be found proper under the IDEA even if it did not provide the student with all of the
 18 necessary educational benefits. *Id.* at 15-16.

19 Plaintiff argues that the placement at Provo Canyon is not proper under the IDEA
 20 because it did not implement A.T.'s last IEP (which is not a requirement), and did not place
 21 him in advanced classes. However, under the Ninth Circuit standard, the private placement

DEFENDANTS' OPPOSITION TO
 PLAINTIFF'S MOTION FOR SUMMARY
 JUDGMENT AND CROSS-MOTION FOR
 SUMMARY JUDGMENT- 41

Cassady Law PLLC
 506 Second Avenue, Suite 1400
 Seattle, Washington 98104
 Phone: 206-452-5665
 Fax: 206-299-9960

1 need not furnish every service necessary to maximize the student's potential. There need only
 2 be a showing that the placement provides educational instruction specially designed to meet
 3 the unique needs of a disabled student, supported by such services as are necessary to permit
 4 the student to benefit from instruction. *C.B. ex rel. Baquerizo v. Garden Grove Unified Sch.*
 5 *Dist.* 635 F.3d 1155, 1159 (9th Cir. 2011); *Union Sch. Dist. v. Smith*, 15 F. 3d, 1519 1526 (9th
 6 Cir. 1994) (parents' unilateral residential placement need not satisfy state educational
 7 standards for reimbursement to be ordered).

8 Plaintiff also argues that the parental placement at Provo is not proper because it is not
 9 the least restrictive environment. This is not a requirement for unilateral private placement in
 10 the Ninth Circuit. *Seattle v. B.S.*, 82 F.3d at 1501-1502. In any event, the record
 11 demonstrates that A.T. was not and could not have been appropriately educated in less
 12 restrictive ESD placements.

13 **E. ESD's Proposed Program is Not Appropriate and Did Not Constitute FAPE in The
 Least Restrictive Environment**

14 Plaintiff relies on a case from an Oregon district court rejecting a placement at Provo,
 15 which is factually distinguishable from ours yet helps to frame the issue and highlight the
 16 differences between the inappropriate placements ESD proposed for A.T. and the appropriate
 17 placement at Provo.

18 In *G.R. ex rel. Russell v. Dallas Sch. Dist. No. 2*, 823 F. Supp.2d 1120 (D. Or. 2011),
 19 the court contemplated a residential placement for a student with a learning disability who
 20 brought a knife to school and was convicted of sexual assault. In that case, the school district
 21

DEFENDANTS' OPPOSITION TO
 PLAINTIFF'S MOTION FOR SUMMARY
 JUDGMENT AND CROSS-MOTION FOR
 SUMMARY JUDGMENT- 42

Cassady Law PLLC
 506 Second Avenue, Suite 1400
 Seattle, Washington 98104
 Phone: 206-452-5665
 Fax: 206-299-9960

1 provided a program, “New Options,” for the student that was highly structured with a small
 2 class size, close supervision, daily tracking, behavioral supports, and individual and group
 3 therapy. *Id. at 1142.* New Options would have given that student the ability to practice
 4 needed appropriate social behavior with girls his own age, addressing his behavioral issue
 5 directly (which Provo Canyon could not provide as an all-boys school). *Id.* The student’s
 6 juvenile probation officer testified that he could have successfully attended the school
 7 district’s program and gone to outpatient treatment. *Id. at 1139.* Since the court found that
 8 the student could have received a FAPE while attending New Options at the district, then the
 9 placement at Provo Canyon was found not necessary to provide special education and related
 10 services. *Id.*

11 Scriber’s STEP program is inappropriate at a number of different levels. First, the
 12 “offering” of Scriber is replete with procedural errors that denied FAPE by excluding the
 13 Parents from the educational process; hence regardless of the substantive appropriateness of
 14 Scriber STEP, the first prong of the two part test the Parents must meet to obtain the relief
 15 they seek is met. These procedural errors included ESD’s failure to include the Parents at the
 16 May 7, 2015 IEP meeting where the team decided to place A.T. at Scriber, and its failure to
 17 generate an IEP (as opposed to a PWN) describing educational programming the Student
 18 would receive. When a school district excludes parents from an IEP meeting in which an IEP
 19 is generated, it denies FAPE by excluding the parents from the educational process, and a
 20 court must resolve the first prong in favor of the parent regardless of the appropriateness of
 21 the IEP designed. *W.G. v. Target Range Sch. Dist.*, 960 F.2d 1479, 1484, 1485 (9th Cir 1992),

DEFENDANTS’ OPPOSITION TO
 PLAINTIFF’S MOTION FOR SUMMARY
 JUDGMENT AND CROSS-MOTION FOR
 SUMMARY JUDGMENT- 43

Cassady Law PLLC
 506 Second Avenue, Suite 1400
 Seattle, Washington 98104
 Phone: 206-452-5665
 Fax: 206-299-9960

1 superseded by statute on other grounds, as recognized in *R.B. v. Napa Valley Sch. Dist.*, 496
 2 F.3d 932 (9th Cir. 2007) (failing to include Parents in IEP meeting significantly excluded
 3 them from educational process, denying FAPE, and thus there was no need to determine if
 4 IEP was reasonably calculated to provide educational benefit before awarding private school).
 5 Similarly, when a school district determines a school placement (like Scriber) without first
 6 determining the educational programming needed in an IEP, it excludes the parents from the
 7 educational process by predetermining placement. *W.G.* 960 F.2d at 1484; *Spielberg v.*
 8 *Henrico Cnty. Pub. Schs.*, 853 F.2nd 256, 258-59 (4th Cir. 1988).

9 However, quite apart from the exclusion of the Parents from the educational process,
 10 ESD denied FAPE because Scriber STEP was not appropriate for the Student. Dr. Cecchet
 11 testified to its inappropriateness, and even ESD testified they wanted to take more time to
 12 investigate whether Scriber would work for A.T. before offering a more specific program for
 13 him. There is no indication that A.T. could have successfully attended Scriber STEP, and in
 14 fact he refused to attend after just one day spent there. This is consistent with expert
 15 testimony that A.T. could not have been successfully instructed in less restrictive placements,
 16 such as public school with outpatient treatment, or a day placement.

17 **F. ESD's Failure to Provide a FAPE to A.T. Was Not Cured by A.T.'s Disability-
 18 Related Elopement and Detentions**

19 Plaintiff relies on a Tenth Circuit decision to support its argument that any violations
 20 of the IDEA that ESD may have committed would be ameliorated by A.T.'s truancy. *Garcia*
 21 *v. Bd. of Educ. of Albuquerque Pub. Sch.*, 520 F.3d 1116, 1126 (10th Cir. 2008). However, the

DEFENDANTS' OPPOSITION TO
 PLAINTIFF'S MOTION FOR SUMMARY
 JUDGMENT AND CROSS-MOTION FOR
 SUMMARY JUDGMENT- 44

Cassady Law PLLC
 506 Second Avenue, Suite 1400
 Seattle, Washington 98104
 Phone: 206-452-5665
 Fax: 206-299-9960

1 Ninth Circuit decision in *Taylor v. Honig* has precedential effect and has direct bearing on the
 2 case at hand. 910 F.2d 627 (9th Cir. 1990). *Taylor* also presented an adolescent with serious
 3 emotional disturbance, who was arrested for assaulting a family member, and also spent
 4 periods in both detention facilities and children's psychiatric hospitals. At no time did the
 5 court find, as in *Garcia*, that the periods of absence from school absolved the school from its
 6 responsibility to develop an IEP and appropriate placement for the student. The court upheld
 7 the hearing officer's order of a 24-hour residential facility that would provide, *inter alia*, "an
 8 on-site school program to forestall truancy." *Taylor v. Honig*, 910 F.2d at 630.

9 The Administrative Law Judge, who heard the testimony at hearing, found that "Dr.
 10 Cecchet persuasively explained why the Student's truancy was causally related to his
 11 disabilities" and "the District offered no evidence to the contrary." A.R. 1139. IDEA only
 12 excludes social maladjustment from disability eligibility if the social maladjustment is not
 13 related to emotional disturbance otherwise covered by the Act. 34 CFR §300.8(c)(4)(ii).
 14 School districts cannot shirk their duty to provide appropriate programming and placement to
 15 students who manifest disability-related truancy, including residential placement. *See Taylor*
 16 *v. Honig, supra*; *M.M. v. New York City Dept. of Educ.*, 26 F. Supp. 3d 249 (SDNY 2014);
 17 *Lexington County Sch. Dist. One. V. Frazier*, 2011 US Dist. LEXIS 107813, 111 LRP 62693
 18 (DSC 2011).

19 Moreover, the record is well-developed that while A.T. was attending school in the
 20 ninth and tenth grades, ESD did not consistently implement his IEPs or BIPs, removed
 21 behavioral intervention services, and did not change or add services as A.T.'s school

DEFENDANTS' OPPOSITION TO
 PLAINTIFF'S MOTION FOR SUMMARY
 JUDGMENT AND CROSS-MOTION FOR
 SUMMARY JUDGMENT- 45

Cassady Law PLLC
 506 Second Avenue, Suite 1400
 Seattle, Washington 98104
 Phone: 206-452-5665
 Fax: 206-299-9960

1 functioning deteriorated. A.T.'s truancy issues were profoundly exacerbated by ESD's failure
 2 to provide the structured environment, behavior, counseling, executive functioning and social
 3 support that his evaluations, IEPs and BIPs all identified he needed. Plaintiff should not be
 4 permitted to excuse its failure to deliver FAPE on the Student's absence from school when
 5 the Student's absence from school was in large part caused by Plaintiff's failure to deliver
 6 FAPE at an earlier point when the Student was in school.

7 **G. The ALJ's Findings of Procedural Violations by the ESD are Well-Supported by the
 Record**

8 **1. ESD Denied A.T. a FAPE by Failing to Provide an Appropriate IAES
 9 Following his Long-Term Suspension**

10 The federal regulations implementing the IDEA require that when a disciplinary removal
 11 of a student with a disability from his or her current placement occurs, that student must
 12 continue to receive educational services, "so as to enable the child to continue to participate
 13 in the general education curriculum, although in another setting, and to progress toward
 14 meeting the goals set out in the child's IEP." 34 CFR §300.350(d)(1). (emphasis added) The
 15 student must also receive, as appropriate, a functional behavioral assessment, and behavioral
 16 intervention services and modifications, that are designed to address the behavior violation so
 17 that it does not recur. *Id.*

18 Assuming *arguendo* that A.T.'s conduct was not a manifestation of his disability, the
 19 ESD was still required to provide A.T. with an Interim Alternative Educational Setting
 20 (IAES), and 75 minutes per week instruction on IEP goals was woefully inadequate to enable
 21 A.T. to participate in the general education curriculum ---- according not only to the Parents'

DEFENDANTS' OPPOSITION TO
 PLAINTIFF'S MOTION FOR SUMMARY
 JUDGMENT AND CROSS-MOTION FOR
 SUMMARY JUDGMENT- 46

Cassady Law PLLC
 506 Second Avenue, Suite 1400
 Seattle, Washington 98104
 Phone: 206-452-5665
 Fax: 206-299-9960

1 witness, psychologist Stacy Cecchet, but also according to the school psychologist intimately
 2 involved with the Student's education, Christine Sutton (as evidenced in her emails in
 3 evidence).

4 As correctly noted by ALJ Mentzer, a student's IEP team must decide both the setting
 5 and the services for the IAES: the interim alternative educational setting...shall be
 6 determined by the IEP team." *See* WAC 392-172A-05150; 34 CFR §300.531; *Admin. Order*
 7 at ¶27-28. The ALJ correctly found these decisions were made unilaterally by ESD
 8 administrators, not by the IEP team, thus excluding the Parents from the educational process.

9 **2. The Plaintiff's Failure to Evaluate A.T. Denied Him FAPE**

10 School district are required to reevaluate students whenever "the educational or
 11 related service needs... of the child warrant a reevaluation." 34 CFR 300.303(a). A.T.'s
 12 most recent reevaluation by ESD at the time of hearing occurred in February of 2013, during
 13 his eighth grade year. During A.T.'s ninth, tenth and eleventh grades, his behaviors
 14 precipitously increased and his academic performance plummeted. This triggered the
 15 obligation to reevaluate: a reevaluation is a formal process under IDEA to determine the
 16 nature of a student's educational needs so that appropriate educational programming and
 17 placement can be offered.

18 Moreover, ESD staff should have initiated a reevaluation based on their suspicion
 19 that A.T. experienced Autism Spectrum Disorder. School districts "shall ensure that ... the
 20 child is assessed in all areas of suspected disability." 20 USC § 1414(b)(3)(B). This
 21 obligation to evaluate includes "medical services... for diagnostic and evaluation

1 purposes.” 20 USC §1401(26)(A); 34 CFR§ 300.34.

2 School Psychologist Christine Sutton suspected A.T. experienced autism, but did not
 3 tell the Parents this or initiate a reevaluation. School districts are responsible for initiating
 4 evaluations, including medical evaluations, when they suspect an undiagnosed disabling
 5 condition. *See also N.B. v. Hellgate Elem. Sch. Dist.*, 541 F.3d 1202, 1209 (9th Cir. 2008)
 6 (school district denied FAPE in telling parents who disclosed a medical diagnosis of autism
 7 that they should obtain a general evaluation from a child development center); *Union Sch.*
 8 *Dist. v. Smith*, 15 F.3d 1519, 1523 (9th Cir. 1994) (parents failure to secure an evaluation,
 9 even if the parents agreed to obtain it, does not excuse the school district's obligation under
 10 the IDEA to secure such an evaluation); *Dept. of Educ. State of Hawaii v. Cari Rae S*, 158
 11 F. Supp.2d at 1198 (DC Hi 2001) (school district must reimburse parents for costs of a
 12 hospitalization necessary for proper evaluation of the student's disability); *MJC By Martin v.*
 13 *Special Sch. Dist. No. 1*, 58 IDELR 288 (DC Minn 2012) (district must secure a medical
 14 evaluation by a licensed physician if such an evaluation is necessary to determine student's
 15 IDEA eligibility); *Letter to Anonymous*, 34 IDELR 35 (OSEP 2000)(where physician's
 16 examination necessary to establish ADHD to determine IDEA eligibility, must be at no cost
 17 to parents).

18 The District cannot excuse its failure to evaluate on the fact that A.T. exhibited
 19 school refusal and was therefore “unavailable” to evaluate. As part of any reevaluation
 20 under IDEA, a district must initially determine the data available and the data needed. 34
 21 CFR 300.305(a). School districts are permitted to evaluate a student by review of existing

DEFENDANTS' OPPOSITION TO
 PLAINTIFF'S MOTION FOR SUMMARY
 JUDGMENT AND CROSS-MOTION FOR
 SUMMARY JUDGMENT- 48

Cassady Law PLLC
 506 Second Avenue, Suite 1400
 Seattle, Washington 98104
 Phone: 206-452-5665
 Fax: 206-299-9960

1 information alone without additional testing or observation of the Student, 34 CFR §
 2 300.305(d), and in this case the ALJ found, correctly, that the District had “extensive and
 3 recent assessments, both formal and informal from which to conduct its reevaluation.” AR
 4 1148 at ¶ 49. Plaintiff had at its disposal the comprehensive formal evaluation of Dr.
 5 Cecchet as well as available information about A.T. from school psychologist Christine
 6 Sutton and MDHS teacher observations and reports. *Id.* Second, a student may be evaluated
 7 in-patient at a hospital, mitigating the risk of elopement. *Cari Rae S*, 158 F. Supp.2d 1190,
 8 1198 (DC Hi 2001).

9 The District was obligated to reevaluate the Student after receipt of Dr. Cecchet’s
 10 report diagnosing A.T. with prodromal schizophrenia. The requirement to reevaluate may
 11 be triggered by the report of outside experts. *See N.B. v. Hellgate Elementary School*
 12 *District*, 541 F.3d 1202, 1209 (9th Cir. 2008) (school district failed to evaluate student after
 13 speech and language pathologist report provided by the parents identified an "autistic
 14 component" interfering with child's education). Yet no one at ESD initiated a reevaluation
 15 under IDEA, which would have triggered a formal process for focusing on, assimilating, and
 16 responding to this new information and determining its implications for educational
 17 planning.

18 The District should have evaluated the Student before changing his placement.
 19 School districts violate IDEA by materially changing a student’s educational program and
 20 placement without conducting a reevaluation first. *Oak Harbor School District 201*, 46
 21 IDELR 52 (OCR 2005). A school district changes a student’s placement whenever a change

1 is "likely to affect in some significant way the child's learning experience." *See DeLeon v.*
2 *Susquehanna Community School Dist.*, 747 F.2d 149, 153 (3rd Cir.1984). The record
3 clearly supports that such a change occurred when ESD transferred A.T. to Scriber STEP.

4 After a careful application of the law to the facts in the case, The ALJ correctly
5 concluded that the Plaintiff's failure to reevaluate the Student, to offer an appropriate IAES,
6 and to convene an IEP meeting to design an IEP had a substantive impact, thereby
7 constituting a denial of FAPE. AR 1144, 1146-1147, 1149,1150. These findings are well-
8 supported by the record at hearing.

9 **III. CONCLUSION**

10 Based on the foregoing, Defendants respectfully request an order affirming the ALJ's
11 decision in its entirety, including awarding the Parents' reimbursement at public expense for
12 the placement of A.T. at Provo Canyon, prospective placement at Provo Canyon, and
13 declaration that ESD denied A.T. a FAPE.

14 Respectfully submitted this 17th day of April, 2017.

15 By: s/Charlotte Cassady
16 Charlotte Cassady, WSBA #19848
Cassady Law PLLC
17 Attorney for Defendants

18 s/Nicholle Mineiro
19 Nicholle Mineiro, WSBA #4475
Cassady Law PLLC
20 Attorney For Defendants

21
DEFENDANTS' OPPOSITION TO
PLAINTIFF'S MOTION FOR SUMMARY
JUDGMENT AND CROSS-MOTION FOR
SUMMARY JUDGMENT- 50

Cassady Law PLLC
506 Second Avenue, Suite 1400
Seattle, Washington 98104
Phone: 206-452-5665
Fax: 206-299-9960